FOR ARGUMENT

Supreme Court, U.S.
FILED
MAR 28 1980
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1268

PATRICIA R. HARRIS, SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Appellant

—*vs.*—

CORA MCRAE, ET AL.

PATRICIA R. HARRIS, SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Appellant

—*vs.*—

NEW YORK CITY HEALTH AND HOSPITALS CORP.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPLICATION FOR A STAY FILED FEBRUARY 11, 1980
PROBABLE JURISDICTION NOTED FEBRUARY 19, 1980

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76C 1804

APPEAL

McRAE, CORA, ET AL.

CORA McRAE, individually and on behalf of all others similarly situated; PLANNED PARENTHOOD OF NEW YORK CITY, INC.; and IRWIN B. TERAN, M.D., individually and on behalf of all others similarly situated,
PLAINTIFFS

v.

HEW

JOSEPH A. CALIFANO, JR., Secretary United States Department of Health, Education, and Welfare,
DEFENDANT

SENATORS JAMES L. BUCKLEY and JESSE A. HELMS, CONGRESSMAN HENRY J. HYDE and ISABELLA A. PERNICONE, ESQ., INTERVENOR-DEFENDANTS

Cause: Violation of US Constitution as a result of passage of H.R. 14232 containing "Hyde Amendment"—Related case: 72 C 386.

ATTORNEYS

Related case:

GREENBAUM, WOLFE & ERNST
437 Madison Avenue
New York, NY 10022
PL8-4010

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
By: JANET BENSHOFF
22 East 40th Street
New York, N.Y. 10016
(212) 725-1222

Atty. Deft:

DAVID G. TRAGER U. S. Atty:
By: RICHARD P. CARO A.U.S.A.

For Intervenor-Defendants:

Buckley, et al.
GERALD BODELL
102 East 35th Street
New York, N.Y. 10016

For Deft.-intervenor

A. LAWRENCE WASHBURN
117 Pennsylvania Avenue
Brooklyn, N.Y. 11207

DOCKET ENTRIES

DATE	PROCEEDINGS
10-1-76	Complaint filed. Summons issued.
10-1-76	Brief Amici Curiae filed.
10-1-76	By DOOLING, J-OTSC dtd 10-1-76 why a preliminary injunction pursuant to Rule 65 enjoining defts from enforcing the Hyde Amendment filed. ORDERED that pursuant to Rule 65 the deft etc his agents, are restrained from enforcing, in any way the Hyde Amendment etc filed.
10-1-76	By DOOLING, J-Order dtd 10-1-76 extending the tro until 10-21-76 at 10:40 am filed on document #3.
10-1-76	Pltffs' memorandum in support of their motion for a tro filed.
10-1-76	Affidavit of Irwin B. Teran filed.
10-5-76	Summons ret and filed/executed.
10-5-76	Letter dtd 10-1-76 to J. Dooling from Janet Benshoof re amici brief filed.
10-5-76	Copy of administrative letter of NYS Dept. of Social Services.

DATE	PROCEEDINGS
10-13-76	Defts memo of law filed.
10-18-76	Memorandum in opposition filed.
10-18-76	By DOOLING, J Order to show cause ret 10-18-76 why an order should not be entered advancing the case herein and consolidating pltffs' applications for preliminary injunction filed.
10-18-76	Proposed injunction filed.
10-18-76	Pltffs' memorandum in reply to deft's opposition etc filed.
10-18-76	USA's supp. memo of law filed.
10-19-76	Amici curiae brief filed.
10-20-76	Before DOOLING J-Case called. Motion to intervene on preliminary injunction argued. Decision reserved. Hearing adj'd.
10-20-76	Affidavit in support of motion to intervene filed.
10-20-76	Proposed answer to complaint of Cora McRae filed.
10-20-76	Affidavit in support of motion to intervene filed.
10-20-76	Affidavit in support of motion to intervene filed.
10-20-76	Memo in support of petition to intervene filed.
10-20-76	Petition of Isaoella M. Pernicone filed.
10-20-76	Unsigned otsc re intervention filed.
10-20-76	By DOOLING, J Order extending TRO to 10-22-76 at 5:00 p.m.
10-20-76	Affidavit of Lewis H. Koplick filed.
10-20-76	Memo of law in support of Buckley et al to intervene filed.
10-21-76	Sten. transcript dtd. 10-1-76 filed.

DATE	PROCEEDINGS

10-21-76 Supplemental affidavits of A. Lawrence Washburn, Jr.

10-22-76 By DOOLING J-Memo & Order dtd 10-22-76 enjoining the deft's from enforcing the Hyde Amendment filed. Pltff's McRae and Teran are entitled to maintain this action pursuant to Rule 23(a) etc.

10-22-76 By DOOLING, J-Order dtd 10-25-76 that the application pending appeal is denied.

10-27-76 Unsigned application pursuant to Rule 8(a) for a stay pending appeal.

10-28-76 By DOOLING, J-ORDER TO SHOW CAUSE ret 10-29-76 for an order amend- the Order of this Court dtd 10-22-76 filed.

10-29-76 Notice of appeal to US Supreme Court and application for an stay of district court order 10-22-76 filed. copies mailed.

10-29-76 Before DOOLING, J.—Case called for motion to amend judgment. Decision reserved and hearing adjd

10-29-76 Affidavit of E. Paul & pltff's statement in opposition to amend order filed.

10-29-76 USA's proposed modification to order filed.

11-1-76 By DOOLING, J-Order dtd 10-29-76 denying the motion to amend the order of 10-22-76 filed.

11-3-76 Letter dtd 11-2-76 to J. Dooling from Rhonda Copelon with copies of papers filed by pltff opposing the deft-intervenors application for stay.

11-19-76 Notice of appeal to the Supreme Court filed. (USA) Copy mailed

11-22-76 Sten. transcript dtd. 10-18-76 filed.

12-6-76 Above record certified and mailed to US Supreme Court

DATE	PROCEEDINGS

12-15-76 HEW's notice of appeal filed. Copy mailed to the C of A.

12-17-76 Notice of appeal to the Federal Court of Appeals for the Second Circuit filed. $250.00 deposited in the registry of the Court (in lieu of bond) by A. Lawrence Washburn, Jr. atty for the Appellant-Intervenor Isabe;; a M. Pernicone. Copy mailed to the C of A.

12-22-76 Civil appeal scheduling order filed.

1-5-77 Sten transcript dtd 10-29-76 filed.

7-25-77 Copy of letter of Clerk, Supreme Court dtd 7-20-77 filed re: application for a stay of execution. ld

7-25-77 Copy of opinion of Supreme Court filed (annexed to doc. #46) re: Justice Marshall has decided not to act on the application for a stay of execution of the Sup Ct's vacatur of the district court's injunction. ld

7-27-77 Unsigned ORDER TO SHOW CAUSE-In Re: motion for temporary restraining order & supporting affidavits, filed. by pltff.

7-27-77 Affidavits respecting survey of state reimbursement policies filed by pltff.

7-27-77 Affidavits of state officials respecting reimbursement policies filed by pltff.

7-27-77 Unsigned ORDER TO SHOW CAUSE respecting intervention and amendment of the complaint, and affidavits in support filed by pltff.

7-27-77 Amended complaint filed by pltff.

7-27-77 Proposed Intervenor complaint, filed by pltff.

7-27-77 AFFIDAVITS of intervenors, also supporting motion for temporary restraining order filed by pltff.

7-27-77 MEMORANDUM OF LAW in support of motion to intervene and to amend the complaint filed by pltff.

DATE	PROCEEDINGS

7-27-77 Letter of AUSA Edward S. Rudofsky to DOOLING, J. dtd 7/27/77. IN RE: Opposing entry of temporary restraining order, filed.

7-28-77 Certified copy of Judgment from SUPREME COURT of U.S. that judgment of U.S. District Court in this cause be and is hereby vacated, and that this cause be & is hereby remanded to the U.S. District Court for the EAST. DIST. of NY for further consideration in light of Maher -v- ROE 432 U.S. & Beal -v- Doe 432 U.S. (1977) filed.

7-28-77 Pltff's MEMORANDUM in support of motion for a temporary restraining order. filed.

7-28-77 Before DOOLING, —Case called. Motion for tro argued, and granted. Hearing on motion for preliminary injunction scheduled for 8-3-77. Motion for interventions argued. Motion granted. Motion for amended complaint, defts not consenting motion granted.

7-28-77 By DOOLING, J—Order to show cause I dtd 7-28-77 returnable on 8-3-77 why an order should not be entered temporarily restraining effectuation of the Hyde Amendments pending hearing on pltffs' motion for a preliminary injunction etc filed. ORDERED that deft shall continue to pay the federal share in accordance with procedures prior to enactment of the Hyde Amendment filed. See #47.

7-28-77 Affidavit of Ellen Leitzer filed. mg

7-28-77 Affidavit of Dr. David Bingham filed. mg

7-28-77 Copy of letter dtd 7-2-77 to Janet Benshoof from Leon Ginsburg re expenditures of state monies for abortions filed. mg

7-28-77 Affidavit of C. Tietze filed. mg

7-29-77 Pltff's first notice to produce documents pursuant to Rule 34 of F.R.C.P., filed.

8-2-77 Cert. copy of judgment from Supreme Court dismissing the appeal. (acknowledgement mailed.)

DATE	PROCEEDINGS

8-3-77 Deft's memorandum in opposition to pltff's motion for preliminary injunction filed. mg

8-4-77 By DOOLING, J-Order to show cause why ab order should not be made vaacting the tro entered 7-28-77 filed. mg

8-4-77 By DOOLING J-Order to show cause for leave to file a second amended complaint ret 8-3-77 filed. mg

8-3-77 Before DOOLING, J.—Case called. Pltff Health & Hospitals Corp moves to amend the complaint. Decision reserved. Deft intervenors moves to reconsider the vacation of the TRO. Decision reserved. Deft intervenors move to quash the hearing of pltffs evidence. Motion denied with leave to renew. Deft moves that pltff be required to make offers of proof of prior to testimony in order to the scope of the hearing. Motion denied.

8-4-77 By DOOLING, J.—Order dtd 8-4-77 vacating TRO filed on document #47.

8-4-77 By DOOLING, J.—Order dtd 8-4-77 vacating TRO filed on document #10.

8-4-77 Unsigned order to show cause filed.

8-4-77 By DOOLING, J.—Order to show cause to intervene filed on document #67.

8-5-77 Pltff's second notice to produce filed.

8-5-77 Letter of 7-26-77 to Judge Dooling from Rhonda Copelon filed.

8-5-77 Pltff's reply in support of restraining order filed.

8-5-77 Affidavit of Alexander Sharp filed.

8-5-77 Intervenor defts' memo of law in support of application to vacate tro and in opposition to pltff's application for preliminary injunction filed.

8-5-77 By DOOLING, J.-Order dated 8-3-77 re: not signing of order to show cause filed.

DATE	PROCEEDINGS
8-5-77	By DOOLING, J.-Order dated 8-4-77 denying temorary restraining order filed.
8-4-77	Before DOOLING, J.—case called—motion to dissolve T.R.O. reviewed pltff moves for T.R.O.—pltff moves to allow as pltff-intervenors Mary Doe and David Bingham—motion granted—motion to dissolve T.R.O. granted —T.R.O. is vacated—motion to extend TRO denied—hearing adjd without date
8-5-77	Stenographer's transcript dated 8-3-77 filed.
8-5-77	Stenographer's transcript dated 8-4-77 filed.
8-5-77	Intervenors-defts supplemental memorandum filed.
8-5-77	Memorandum in support of intervening-deft motion in liminie to exclude oral testimony etc. filed
8-8-77	Before DOOLING, J.—Case called. Pltff's proposed notice argued. Proposed notice not signed. Discovery motion argued. Ruling on the record. mm
8-9-77	Unsigned proposed notice filed. mm
8-10-77	Stenographer's transcript dtd 8-8-77 filed. mm
8-11-77	Before DOOLING, J.—Case called. Hearing resumed. Hearing continued to 9-9-77. mm
8-12-77	Memorandum of law in support of motion to intervene filed. mm
8-12-77	Proposed intervenor complaint filed. mm
8-12-77	Stenographer's transcript dtd 7-28-77 filed. mm
8-12-77	Stenopgrapher's Transcript dated 8/11/77 filed.
8-23-77	Pltffs first set of interrogatories to deft filed. tk
8-25-77	Memo filed to all counsel from Art Leavens dtd 8/25/77, re: calling of witnesses in Sept. tk
8-25-77	Copy of memo filed to all counsel from Art Leavens dtd 8/25/77, re: calling of witnesses in Sept. tk

DATE	PROCEEDINGS
8-29-77	Affidavit of Frederick Jaffe filed re based on the Institute's studies of the impact of the withdrawal or restricting of Medicaid reimbursement for abortion. jilj
9-1-77	Before DOOLING, J.—Case called. Hearing resumed. Trial continued to 9/6/77.
9-6-77	AFFIDAVIT of Alexander E. Sharp, II, Commissioner of the Massachusetts Department of Public Welfare, filed. (THIS DOCUMENT IS THE ORIGINAL of Document #71)
9-6-77	Before Dooling, J case called-hearing resumed-hearing contd to 9/7/77.
9-7-77	Before Dooling, J hearing resumed-hearing contd to 9/19/77. jlj
9-9-77	Stenographers transcript filed dtd 9/7/77. tk
9-20-77	Before DOOLING J.—Case called. Hearing resumed. Hearing continued to 9/23/77. tk
9-23-77	Before Dooling, J—case called—hearing resumed—hearding contd to 9/26/77.
9-26-77	Before DOOLING,J.—Case called. Hearing resumed. Hearing continued to 9-28-77. mm
9-28-77	Before DOOLING, J.—Case called. Hearing resumed. Hearing cont'd to 9-30-77.
9-30-77	Before DOOLING J.—Case called. Hearing resumed. Hearing continued to Oct. 4, 1977. tk
10-4-77	Before Dooling, J—case called—hearing resumed—trial contd to 10/5/77.
10-5-77	Before Dooling, J—case called—hearing resumed—trial contd to 10/7/77.
10-6-77	Copy of letter filed to Mr. Copelon from Michael Rodak that the Court (Supreme Court) denied the petition for rehearing in the above action. tk
10-11-77	Before Dooling, J—case called—hearing resumed—trial contd to 10/12/77.

DATE	PROCEEDINGS

10-12-77 Before DOOLING, J. Case called. Hearing resumed. Hearing continued to 10/14/77.

10-14-77 Before DOOLING, J. Case called. Hearing resumed. Hearing adjourned without date.

10-17-77 Stenographers transcript dtd 10/14/77 filed. tk

11-29-77 Notice to take deposition upon oral exam of Connie J. Downey, on 12/2/77 @ 9:00 AM at EDNY, filed. jm

11-30-77 Notice to take deposition upon oral examination of Peter Schuck, Dep assist HEW on 12/6/77 @ 1 PM in EDNY, filed. jm

12-2-77 Before DOOLING J—Motion for protective order. Ordered that no depositions at Downey or Schuck be taken but that documents be produced. tk

12-8-77 By Dooling, J.—Order dtd 12/8/77 directing clerk to withdraw from Registry sum of Two Hundred Fifty ($250) dollars and pay same to A.L. Washburn, Jr. as and for complete refund of moneys previously deposited in lieu of bond, filed. jm

12-27-77 Defts supp. answer to pltff's interroga. #3 filed. fy

1-6-78 Before DOOLING, J.—Case called for hearing, motion to amend, no opposition, motion granted

1-9-78 Pltffs amended complaint filed.

1-9-78 Affidavit of Jane E. Hodgson filed. tk

1-9-78 Pltff—intervenors affidavit by Theressa Hoover filed. tk

1-25-78 Deft's answer to amended complaint, filed. jm

2-2-78 Letter dtd 1/31/78 of R. Copelon to Dooling, J.—filed. jm

2-9-78 Motion of Catholic League for Religious and Civil Rights etc., to intervene as party defts filed. fy

DATE	PROCEEDINGS

2-9-78 Before DOOLING, J.—Case called for hearing, hearing resumed and cont to 2-14-78.

2-14-78 Pltff's memo of law in opposition to Catholic League to intervene filed. fy

2-15-78 Before Dooling, J.—Case called. Hearing resumed. Hearing adjounred to 2/16/78. jm

2-14-78 Before DOOLING, J. Case called. Hearing resumed. MOTION by CATHOLIC LEAGUE, et al to intervene as party-defts-ARGUED. MOTION DENIED except to the extend that petitioners may appeal as amici curiae. (SEE ORDER ON BACK OF MOTION PAPERS) Hearing adjourned to 2/15/78.

2-17-78 Before DOOLING, J—Case called. Hearing resumed. Hearing adj'd to 2-21-78. mg

2-23-78 Before DOOLING,J—Case called. Hearing resumed. Adj'd to 3-2-78. mg

3-2-78 Before DOOLING,J—Case called. Hearing resumed. Intervenor-deft's motion to strike the testimony of certain of pltff's witnesses argued and denied. Hearing adj'd to 3-8-78. mg

3-7-78 Notice to take deposition of persons listed on date given, filed. (of W. Sweeney, of Rev. P.V. Ahern, of C.J. Tobin, Jr.)

3-7-78 Sten. transcript dtd 3-2-78 filed. mg

3-10-78 Before Dooling, J.—Case called. Hearing resumed. Adjourned w/o date. jm

3-16-78 Pltffs second set of interroga. to deft filed. fy

3-28-78 Before Dooling, J.—Case called. All parties present. Continued to 3/29/78 @ 10 AM. jm

3-29-78 Before DOOLING, J—Case called. Hearing resumed. Cont'd to 3-30-78. mg

DATE	PROCEEDINGS

3-30-78 Before DOOLING, J.—Case called for hearing, hearing resumed, hearing cont to 3-31-78.

3-31-78 Before DOOLING, J.—Case called for hearing, hearing resumed, hearing adjd without date

4-20-78 Deft's notice of motion returnable 4-21-78 for protective order and memorandum of law in support of deft's motion for protective orders. km

4-21-78 Before DOOLING, J.—Case called, Parties present. H.E.W.'s MOtion for protective order argued. Pltff's motion for the introduction of certain documents into evidence—argued. Parties to confer and report to court 4/28/78. Deft H.E.W. to answer interrogatories on or before May 15, 1978. Order signed. Adjourned without a date. ls

5-2-78 Stipulation between counsel for the pltffs and deft, that documents identified as Exhibits 200-256 and 260-266, will be admitted to evidence pursuant to certain terms. (see order) filed. ls

5-2-78 letter= dtd 5/1/78, from J. BENSHOFF, counsel for Pltff, to R. CARO, A.U.S.A.. filed. ls

5-2-78 Letter dtd 5/1/78, from Jill Laurie Goodman, to Mr. CARO, A.U.S.A., filed. ls

5-2-78 Pltff's Interrogatories and notice to produce (midified), filed. ls

5-2-78 Janet Benshoof's Affidavit in support of Pltff's proposed Exhibits No. 258 and 259, filed. ls

5-2-78 Pltff's request that Deft JOSEPH CALIFANO admit for purposes of this action only the truth of certain facts, filed. ls

5-22-78 Letter from A. Lawrence Washburn dated 5/19/78 filed

5-22-78 Answer to pltff's second notice to admit (Hyde) filed. sg

DATE	PROCEEDINGS

5-22-78 Answer to pltff's first notice to admit and addendum filed sg

6-2-78 Stipulation agreed by and between the parties, that certain affidavits shall be admitted into evidence. filed. ls

6-9-78 Deft's objections and answer to pltffs' motion to admit, filed. jm

6-23-78 Before DOOLING, J.—Case called for hearing, hearing resumed, hearing adjd without date. fy

6-27-78 By DOOLING, J.—Privacy Act Order dtd 6-27-78 that the deft disclose information pertaining to various individuals who may be identifiable from said information, or other info readily accessible, contained in certain agency files, to the extent disclosures of such info is necessary to answer and comply with pltffs' third interrogatories and Notice to produce in good faith filed. km

6-27-78 Answer to pltffs' third interrogatories and Notice to Produce, filed. km

6-29-78 Answer to pltff's second (modified) interrogatories Nos. 5-7 and notice to produce. Filed. ls

7-19-78 Certified copy of order received from court of appeals and filed dismissing appeal

7-31-78 Letter dtd 7/26/68, from Richard Caro to Judge Dooling. In re: annexed please find copy of letter from General counsel office. Filed. ls

8-3-78 Pltffs first notice to admit filed. fy

8-3-78 Pltffs second notice to admit filed. fy

8-3-78 Pltffs first notice to admit, addendum I filed. fy

8-2-78 Before DOOLING, J.—Case called for hearing on motion to introduce evidence of pltff, all parties present, Hearing ordered and begun, hearing contd to 8-3-78. fy

DATE	PROCEEDINGS

8-3-78 Before DOOLING, J.—Case called, for hearing on motion to introduce evidence of Pltff. Hearing resumed. Hearing concluded. Case adjourned to 8/28/78, at 10:00 for Deft-intervenors case. Deft's briefs due by 10/2/78.

8-4-78 Pltff's second notice of admit. filed. ls

8-14-78 Stenographers transcript filed dtd. 8-2-78 jc

8-14-78 Stenographers transcript filed dtd. 8-3-78 jc

8-16-78 Pltffs statement of facts on issues other than religion filed.

8-16-78 Notice of motion ret. 8-28-78 for leave to submit brief amicus curiae filed. fy

8-18-78 Notice of Motion for leave to file brief of new legal defense and education fund, as *amicus curiae*, returnable on August 28, 1978, at 10:00 am. Filed. ls

8-18-78 Motion of American Academy of Child Psychiatry to file a brief as amicus curiae filed. fy

8-21-78 Supplement to deft's answers to pltff's first & second interrogatories filed. mg

8-23-78 Affidavits (2) of service, filed. ls

8-28-78 Before DOOLING, J.—Case called for motions to file briefs amicus curiae granted, briefing schedule set, oral argument on 11-9-78. fy

8-29-78 By DOOLING, J.—Order dtd. 8-28-78 granting motion of American Orthopsychiatriac Ass., to file amicus curiae brief by 10-20-78 filed. on back of doc. 139. fy

8-29-78 Notice of motion of American Ortho to file amicus curiae brief filed. fy

8-28-78 By DOOLING, J.—Order dtd. 8-28-78 granting motion of Religiuos organizations to file amicus curiae brief by 10-20-78 filed on back of doc. #133. fy

8-29-78 By DOOLING, J.—Order dtd. 8-28-78 granting motion of NOW LDEF to file an amicus curiae brief by 10-20-78 filed. on back of doc #134. fy

DATE	PROCEEDINGS

8-29-78 By DOOLING, J.—Order dtd. 8-28-78 graing motion of J. Heintz & M. Rogers to appear pro hoc vice filed on doc. #135. fy

8-29-78 By DOOLING, J.—Order dtd. 8-28-78 granting motion of American Academy of Child Psychiatry to file an amicus curiae brief by 10-20-78 filed on doc. #135. fy

8-30-78 Sten. transcript dtd. 12-2-77 filed. fy

9-5-78 Copy of Memorandum of Law of pltff. Filed. ls

9-5-78 Notice to take deposition of H. Hyde filed. fy

9-8-78 Second supplement to defts answers to pltffs first, 2nd interrs and notice to produce, filed. jm

9-6-78 Before Dooling, J.—Case called, all sides present, hearing concluded. jm

9-11-78 Sten. transcript dtd. 9-6-78 filed. fy

9-18-78 Statement of facts on issues other than religion. Filed. ls

9-18-78 Brief of Amici Curiae in support of pltffs' complaint filed rh

9-18-78 Brief of Now Legal Defense & Education Fund as Amicus Curiae in support of Pltffs filed rh

9-19-78 Letter dtd. 9/14/78 from Rhonda Copelon to Hon. John F. Dolling, Jr. together with attchmt re continued authorization & appropriations for the U.S. Commission on Civil Rights filed rh

9-21-78 Deft's Second Supplement to Deft's Answers to Pltffs' First, Second, & Second (Modified) Interrogatories & Notices to Produce: *Continued* filed rh

9-25-78 Pltffs' Memorandum of Law on the Vagueness Claim filed. sk

10-3-78 Pltff's memorandum in support of a default against intervenor-deft's. Filed. ls

DATE	PROCEEDINGS

10-3-78 Notice of Motion for entry of default judgment, returnable on October 6, 1978, at 9:30 am. Filed. ls

10-11-78 Affidavits of LAWRENCE WASHBURN, in opposition to motion for entry of default judgment against interevnor-deft's. Filed. ls

10-11-78 Pltff's first amendment brief, filed. ls

10-11-78 Affidavit of service of brief, filed. ls

10-27-78 Notice of motion for leave to file brief Amici Curiae, no ret date, filed, jm

10-27-78 BRIEF of AMICUS CURIAE of American Academy of Child Psychiatry, filed.

11-3-78 By DOOLING, J.—Order dtd. 11-2-78 granting motion of Committee For Abortion Rights for leave to file brief amici curiae etc., filed on back of doc. #156. fy

11-14-78 Post-trial memo of law of Pernicone filed. fy

11-14-78 Intervenors-defts reply memo of law to pltffs first amendment brief filed. fy

11-14-78 Brief of Amicus curiae filed. fy

11-14-78 Intervenors memo of law on title XIX of the Social Security Act filed. fy

11-16-78 Intervenors' Memorandum on Title XIX of the Social Security Act, Equal Protection, Due Process & Vagueness Claims. mw

11-16-78 Affidavits of service of "Defendant's Post-Trial Memorandum of Points & Authorities" filed. (AUSA Richard P. Caro). mw

11-16-78 Affidavit of service of Thomas J. Marzen filed. mw

11-16-78 Deft's Post Trial Memorandum filed. mw

11-16-78 Brief of Amici Curiae filed. mw

11-30-78 Pltffs' Reply to Defts' Post Trial Memoranda filed rh

DATE	PROCEEDINGS

12-1-78 Letter dtd. 11-29-78 from J. Benshoof to J. Dooling with opinion attached from Eastern District of La., filed. fy

12-4-78 Before DOOLING, J.—Case called for hearing on the law, post trial hearing ordered and begun, hearing concluded. fy

12-5-78 By DOOLING, J.—Order dtd. 11-28-78 amending the amended complaint filed. fy

12-8-78 Sten. transcript dtd. 12-4-78 filed. fy

12-13-78 Letter dtd. 12-12-78 from R. Caro AUSA to J. Dooling re: HEW medicaid regulations filed. fy

1-17-79 Letter (copy) dated 1/12/79 from Edward R. Korman, U.S. Atty by: Richard P. Caro, Assistant U.S. Atty, re Ms. Copelan's failure to date to file a motion to have the action recertified as a class action and inquiring of Ms. Copelan as to her present position re class certification in order that it can be decided if any modification in the federal deft's position will be made filed rh

1-24-79 Letter dated 12/18/78 from Jack Brooks to Mr. Lewis Orgel, Clerk stating that pursuant to House Resolution 420, 95th Congress, 1st Session (1977), the House Select Committee on Congressional Operations is required to identify any court proceeding or action of vital interest to Congress and to bring such action to the attention of the House of Representatives—one such case is Buckley v. McRae #76C 1804 and requesting copies of documents #98, 101, 108, 109, 117, 118, 120, 124, 141, 142, 145, 150, 151, 154, 158, 161, 162, 165, 166, 167 and 169 be sent to House Select Committee on Congressional Operations, 1628 Longworth House Office Building, Washington, D.C. 20515 filed rh

1-29-79 Sten. transcripts dtd. 9-1-77, 9-6-77, 9-19-77, 9-20-77, 9-26-77, 9-28-77, 9-30-77, 10-4-77, 10-5-77, 10-11-77, 10-12-77, 2-9-78, 2-14-78, 2-15-78, 2-16-78, 2-17-78, 2-23-78, 3-8-78, 3-10-78, 3-28-78, 3-29-78, 3-30-78, 3-31-78, and 4-21-78 filed. fy

DATE	PROCEEDINGS
1-29-79	Document stipulation #II filed. fy
1-29-78	Documents stipulation #III filed. fy
1-29-79	Documents stipulation #IV filed. fy
1-30-79	Sten. transcript dtd. 10-29-76 filed. fy
1-30-79	Ltr dtd 1/24/79 fm Janet Benshoof to Judge Dooling re: class action certification, filed. mw
1-30-79	By DOOLING, J.—MEMORANDUM & ORDER dtd 1/29/79, that pltffs' motion for an order directing entry of a default judgment against Intervenor-Defts denied. . . . The action has to this date in fact been maintained as a class action & should continue to be so maintained, filed. (See MEMO & ORDER for details). mw
2-2-79	Stenographers transcript dtd 6/23/78. Filed. ls
2-5-79	Letter dtd. 2-2-79 from R. Copelon to all counsel re: film showing on 2-8-79 filed. fy
2-8-79	Before DOOLING, J.—Case called for conf and conf held. fy
2-8-79	Letter dtd. 2-6-79 from R. Copelon to J. Dooling re: attached are certified and complete copies of exhibits #63, 79, 83 & 84 filed. fy
2-8-79	Renewed motion of Catholic League for Religious & Civil Rights to intervene filed. fy
2-22-79	Letter dtd 2/20/79, from Richard P. Caro to Judge Dooling. In re: the deft has no objection to the intervention of the Catholic League for Religious and Civil rights. Filed. ls
3-14-79	Deft HEW's supp. memo of law of points & authorities filed. fy
3-21-79	Letter dtd. 3-21-79 from G. Bodell to J. Dooling with copies of HEW statistics filed. fy
3-23-79	Sten. transcript dtd. 2-8-79 filed. fy

DATE	PROCEEDINGS
4-16-79	Two letters filed dtd 4-12-79 & 4-19-79. fc
5-11-79	Letter dtd. 5-7-79 from R. Caro AUSA to J. Dooling filed. fy
8-1-79	Letter dtd. 7-31-79 from R. Copelon to J. Dooling with copies of state court decisions and copy of a complaint in another action attached, filed. fy
9-12-79	Letter dtd 9-6-79 to all counsel from AUSA Richard Caro re agreement of all counsel 1977 CDC Abortion Surveillance Report etc. be placed into evidence subject to same terms previously stipulated filed.
1-15-80	By DOOLING, J.—Memo and order for judgment that judgment must be entered for pltffs, that pltffs and pltffs-intervenors are entitled to maintain this action as a class action on behalf of medicaid-eligible pregnant women desiring and denied medicaid abortions because of the federal legislation restricting abortion funding etc., see memo and order, filed. fy
1-15-80	By DOOLING, J.—Annex to memo and order dtd. 1-15-80 filed. fy
1-15-80	Judgment dtd. 1-15-80 approved by J. Dooling in favor of pltffs etc., see judgment, filed. fy
1-15-80	By DOOLING, J.—Order dtd. 1-15-80 staying enforcement of judgment for 30 days from 1-15-30, filed. fy
1-15-80	By DOOLING, J.—Order amending complaint filed on 1-9-78 etc., see order, filed. fy
1-15-80	Notice of appeal filed by USA to Supreme Court. copies mailed to parties & Sup. Ct., filed. fy
1-28-80	Notice of appeal filed by intervenor-defts. (rec. 1-25-80). copy mailed to Sup. Ct. fy
1-28-80	Deft-intervenors' application for extension of stay pending appeal filed. fy

DATE	PROCEEDINGS

1-31-80 Notice of motion ret. 2-4-80 with memo of law for an extension of the stay pending final determination of the appeal by the US Supreme Court filed. fy

2-4-80 Pltffs notice of motion ret. 2-4-80 with memo of law to clarify the judgment and in opposition to defts motion for a stay filed. fy

2-4-80 Defts-intervenors's memo of law in support of a limited extension of the stay filed. fy

2-4-80 Before DOOLING, J.—Case called for civil motio. Defts motion for a stay of the judgment pending appeal argued and denied. Pltffs motion for an order to clarify the judgment argued and denied. fy

2-4-80 By DOOLING, J.—Order that pltffs motion to clarify the judgment etc., is denied filed. fy

2-4-80 By DOOLING, J.—Order that the motions for an order extending the stay entered 1-15-80 are in all respects denied filed. fy

2-13-80 Sten. transcript dtd. 2-4-80 filed. fy

2-14-80 By DOOLING, J.—Order that exhibits 300-454 and 456-471 are received in evidence etc., see order, filed. fy

2-19-80 Certificed copy of order from Supreme Court staying judgment of district court pending further order, filed. fy

2-25-80 Certified copy of order from Supreme Court denying application for stay and that probable jurisdiction is noted, etc., filed. fy

2-28-80 Copy of letter dtd. 2-27-80 from R. Copelon to R. Caro, AUSA filed. fy

76C 1805

APPEAL

NEW YORK CITY HEALTH & HOSPITALS CORP.

NEW YORK CITY HEALTH & HOSPITALS CORP. and THE CITY OF NEW YORK, PLAINTIFFS

v.

HEW

F. DAVID MATHEWS, SECRETARY OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, DEFENDANT

SENATOR JAMES L. BUCKLEY and JESSE A. HELMS, CONGRESSMAN HENRY J. HYDE, and ISABELLA M. PERNICONE, ESQ., INTERVENORS-DEFENDANTS

Cause: Civil action for injunctive and declaratory relief to restrain the enforcement of the Hyde Amendment to HR 14232 Bill prohibiting federal funds for reimbursement of Medicaid abortions. Related case 76C 1804.

ATTORNEYS

For Pltff:

W. BERNARD RICHLAND
Corporation Counsel of the
City of New York
Municipal Bldg.
NYC 10007
566-5500/2197

DOCKET ENTRIES

DATE	PROCEEDINGS
10-1-76	Complaint filed. Summons issued.
10-1-76	By DOOLING, J—OTSC dtd 10-1-76 why a preliminary injunction pursuant to Rule 65 enjoining defts from enforcing the Hyde Amendment filed. ORDERED that pursuant to Rule 65 the deft, his agents, etc are restrained from enforcing, in any way the Hyde Amendment etc filed.
10-1-76	By DOOLING, J—Order dtd 10-1-76 extending the tro until 10-21-76 at 10:40 am filed on document #2.
10-1-76	Pltff's memorandum in support of tro filed.
10-5-76	Summons ret and filed/executed.
10-13-76	Defts memo of law filed in 76-C-1805.
10-18-76	Memorandum in opposition filed ib 76C 1804. (USA)
10-18-76	Pltff's memo in support of its motion for a preliminary injunction and to consolidate with hearing on permanent injunction.
10-18-76	Affidavit of Steven Goldberg filed.
10-18-76	By DOOLING, J—ORDER TO SHOW CAUSE ret 10-18-76 why an order should not be entered advancing the case herein and consolidating pltffs' applications for preliminary and permanent injunction filed in 76C 1804.
10-18-76	Proposed injunction filed. See 76C 1804.
10-18-76	USA's supp memo of law filed. in 76-C-1804.
10-19-76	Before DOOLING J—Case called. Motion to intervene on preliminary injunction argued. Decision reserved. Hearing adj'd.
10-20-76	Affidavit in support of motion to intervene filed in 76C 1804.

DATE	PROCEEDINGS
10-20-76	Affidavit in support of motion to intervene filed in 76C 1804.
10-20-76	Affidavit in support of motion to intervene filed in 76C 1804.
10-20-76	Memorandum in support of petition of I. M. Pernicone filed in 76C 1804.
10-20-76	Petition of I. M. Pernicone filed in 76C 1804.
10-20-76	By DOOLING J—Order dtd 10-20-76 extending tro to 10-22-76 at 5:00 riled in 76C 1804.
10-20-76	Unsigned order to show cause re intervention filed. See 76C 1804.
10-20-76	Pltff's memo of law in opposition to motion for intervention by 2 Senators & 1 Congressman filed.
10-20-76	Memo of law in behalf of Buckley et al to intervene filed, in 76-C-1804 filed
10-20-76	Proposed answer to complaint of Buckley et al filed.
10-21-76	Sten. transcript dtd. 10-1-76 filed in 76-C-1804.
10-21-76	Supplemental affidavits of A. Lawrence Washburn filed.
10-22-76	By DOOLING, J—Memo & Order dtd 10-22-76 enjoining the defts from enforcing the Hyde Amendment filed. Pltff's McRae & Teran are entitled to maintain this action pursuant to Rule 23(a) See 76C 1904.
10-22-76	By DOOLING J—Order dtd 10-25-76 that the application for a stay pending appeal is denied filed in 76C 1804.
10-20-76	Letter dtd. 10-26-76 from S. Goldberg to Judge Dooling filed.
10-29-76	Notice of appeal to US Supreme Court and application for an stay of district court order dtd. 10-22-76 filed in 76-C-1804.

DATE	PROCEEDINGS

10-29-76 Before DOOLING, J.—Case called for motion to amend judgment. Decision reserved and hearing adjd.

10-29-76 USA's proposed modification order filed. in 76-C-1804.

11-1-76 By DOOLING, J—Order dtd 10-29-76 denying the motion to amend the order of 10-22-76 filed. See 76C 1804.

11-19-76 Notice of appeal to Supreme Court filed in 76C 1804. (USA).

11-22-76 Sten. transcript dtd. 10-18-76 filed in 76-C-1804.

12-6-76 Above record certified and mailed to US Supreme Court

12-15-76 HEW's notice of appeal filed in 76C1804. Copy mailed to the C of A.

12-17-76 Notice of appeal to the Federal Court of Appeals for the Second Circuit filed in 76C 1804. copy mailed to the C of A.

12-22-76 Civil appeal scheduling order filed in 76C1804.

1-5-77 Sten. transcript dtd 10-29-76 filed in 76C 1804.

7-25-77 Copy of letter of Clerk, Su½reme court dtd 7-20-77 filed in 76 C 1804 re: application for stay of execution. ld

7-25-77 Copy of opinion of Supreme Court filed (annesed to doc. #46 in 76 C 1804) re: Justice Marshall has decided not to act on the application for a stay of execution of the Sup Ct's vacatur of the district court's injunction. ld

7-27-77 Unsigned ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION and a temporary restraining order filed. by atty's for pltff.

7-27-77 Amended verified complaint filed by pltff.

DATE	PROCEEDINGS

7-28-77 By DOOLING, J—Order to show cause ret 8-3-77 why an order should not be made enjoining the dedt from refusing to pay matching funds for abortions filed. ORDERED that the deft and his agents are temporarily restrained from refusing to pay matching funds etc pending a determination by this Court of pltff's application filed. mg See document #10.

7-28-77 Request for productions of documents filed. mg

8-1-77 Record on appeal received from Supreme Court USA. Acknowledgment mailed to Clerk for receipt. mm

8-2-77 Cert. copy of judgment from Supreme Court dismissing the appeal filed. Acknowledgment mailed. See 76C 1804. mg.

8-3-77 Deft's memorandum in opposition to pltff's motion for preliminary injunction filed. See 76C 1804. mg

8-4-77 By DOOLING, J—Order to show cause why an order should not be made vacating the tro entered 7-28-77 filed in 76C 1804. mg

8-4-77 By DOOLING, J—Order to show cause for leave to file a second amended complaint ret 8-3-77 filed in 76C 1804. mg

8-3-77 Before DOOLING, J.—Case called. Pltff Health & Hospitals Corp moves to amend the complaint. Decision reserved. Deft intervenors moves to reconsider the vacation of the TRO. Decision reserved. Deft intervenors moes to quash the hearing of pltffs evidence. Motion denied with leave to renew. Deft moves that pltff be required to make offers of proof of prior to testimony in order to narrow the scope of the hearing. Motion denied. mm

8-4-77 Before DOOLING, J.—case called—motion to dissolve TRO reviewed—pltff moves for TRO-pltff moves to allow as pltff intervenors Mary Doe and David Bingham—motion granted—motion to dissolve TRO granted—TRO vacated—motion to extend TRO denied—hearing adjd without date

DATE	PROCEEDINGS

8-5-77 Stenographer's transcript dated 8-3-77 filed in 76C 1804

8-5-77 Stenographer's transcript dated 8-4-77 filed in 76C 1804

8-5-77 Intervenor deft supplemental memorandum filed (in 76C1804)

8-5-77 Memorandum in support of intervening-deft in liminie to exclude oral testimony etc. filed (in 76C1804)

8-8-77 Before DOOLING, J.—Case called. Pltff's proposed notice argued. Proposed notice not signed. Discovery motion argued. Ruling on the record. mm

8-9-77 Unsigned proposed notice filed in 76C-1804. mm

8-11-77 Before DOOLING, J.—Case called. Hearing resumed. Hearing continued to 9-9-77. mm

8-31-77 Copy of letter of AUSA Rudofsky to Dooling, J dtd 8/30/77 filed re in reference to several inquiries made to chambers etc. jlj

9-6-77 Before Dooling, J—case called—hearing resumed—hearing contd to 9/7/77.

9-7-77 Before Dooling, J—hearing resumed—hearing contd to 9/19/77. jlj

9-9-77 Stengraphers transcript filed dated 9/7/77. (filed in 76 C 1804)

9-20-77 Before DOOLING J.—Case called. Hearing resumed. Hearing continued to 9/23/77 tk

9-23-77 Before Dooling, J—case called—hearing resumed—hearing contd to 9/26/77.

9-26-77 Before DOOLING J—Case called. Hearing resumed. Hearing continued to 9-28-77. mm

9-28-77 Before DOOLING, J.—Case called. Hearing resumed & cont'd to 9-30-77. ld

DATE	PROCEEDINGS

9-30-77 Before DOOLING J—Case called. Hearing resumed. Hearing continued to 10/4/77. tk

10-11-77 Before Dooling, J—case called—hearing resumed—trial contd to 10/12/77.

10-12-77 Before DOOLING, J.—Case called. Hearing resumed. Hearing continued to 10/14/77.

10-14-77 Before DOOLING, J.—Case called. Hearing resumed. Hearing adjourned without date.

12-2-77 Before DOOLING J—Motion for protective order. Ordered that no depositions at Downey or Schuck be taken but that documents be produced. tk

12-8-77 By Dooling, J.—Order dtd 12/8/77 directing clerk to withdraw from Registry sum of Two Hundred Fifty ($250) dollars and pay same to A.L. Washburn, Jr. as and for complete refund to moneys previously deposited in lieu of bond, filed. jm (see #96 of 76-C-1804)

12-27-77 Pltff's supp. answer to pltff's interroga. #3 filed in 76-C-1804 filed. fy

1-6-78 Before DOOLING, J.—Case called for hearing, motion to amend, no opposition, motion granted

2-9-78 Before DOOLING, J.—Case called for hearing and hearing resumed and cont to 2-14-78

2-14-78 Before DOOLING, J. Case called. Hearing resumed. MOTION by CATHOLIC LEAGUE, et al to intervene as party-defts ARGUED. MOTION DENIED except to the extend that petitioners may appeal as amici curiae. (SEE ORDER on BACK OF MOTION PAPERS) Hearing adjourned to 2/15/78.

2-16-78 Before Dooling, J.—Case called. Hearing resumed. Hearing adjourned to 2/17/78 @ 10.30 AM. jm

2-17-78 Before DOOLING, J—Case called. Hearing resumed. Hearing adj'd to 2-21-78. mg

DATE	PROCEEDINGS

2-23-78 Before DOOLING, J—Case called, Hearing resumed. Adj'd to 3-2-78. mg

3-2-78 Before DOOLING, J—Case called. Hearing resumed. Intervenor-deft's motion to strike testimony of certain of pltff's witnesses argued and denied. Hearing adj'd to 3-8-78. mg

3-7-78 Sten. transcript dtd 3-2-78 filed. See 76C 1805. mg

3-8-78 Before Dooling, J.—Case called. Hearing resumed. Hearing continued to 3/10/78 @ 10AM. jm.

3-10-78 Before Dooling, J.—Case called. Hearing resumed. Adjourned w/o date. jm

3-28-78 Before Dooling, J.—Case called. All parties present. Continued to 3/29/78 @ 10AM. jm

3-29-78 Before DOOLING, J—Case called. Hearing resumed. Hearing cont'd to 3-30-78. mg

4-3-78 By DOOLING, J.—Order dtd. 3-31-78 granting pltff leave to file a third amended complaint and a supp. complaint and granting leave for NYC to intervene as a pltff filed. fy

4-3-78 Amended complaint of pltff intervenor-pltff filed. fy

3-30-78 Before DOOLING, J—Case called for hearing, hearing resumed and cont 3-31-78

3-31-78 Before DOOLING, J.—Cace called for hearing, resumed, motion for leave to file third amended complaint is granted, motion by NYC to intervene as pltff granted

4-21-78 Before DOOLING, J.—Case called. Parties present. Deft's H.E.W. to answer interrogatories on or before May 15, 1978. Order signed. Adjourned without a date. ls

6-23-78 Before DOOLING, J.—case called for hearing, hearing resumed and ajd without date. fy

7-19-78 Certified copy of order received from court of appeals and filed dismissing appeal (in 76C1804 #124)

DATE	PROCEEDINGS

8-2-78 Before DOOLING, J.—Case called for hearing on motion to introduce pltffs evidence, all parties present. Hearing ordered and begun, hearing contd to 8-30-78. fy

8-3-78 Before DOOLING, J.—Case called for hearing on motion to introduce evidence of Pltff. Hearing resumed. Hearing concluded. Case adjourned to 8/28/78, at 10:00 am for Deft-intervenors case. deft's briefs due by 10/2/78. ls

8-14-78 Stenographers transcript dtd. 8-2-78 and 8-3-78 filed in 76C 1804 jc

9-6-78 Before Dooling, J.—Case called. All sides present. Hearing concluded. jm

9-11-78 Sten. transcript dtd. 9-6-78 filed in 76C 1804, doc. #144. fy

10-20-78 Letter dtd 10-16-78 from Ellen K. Sawyer to Judge Dooling re: pltff's position in this case being that taken in their Memorandum Of Law in 76 C 1804, filed. sk

12-8-78 Sten. transcript dtd. 12-4-78 filed. In 76 C 1804. fy

2-2-79 Sten. Transcript dtd 6/23/78. Filed in 76 C 1804, #204. ls

1-15-80 By DOOLING, J.—Memo and order for judgment that judgment must be entered for pltffs etc., filed in 76 C 1804, doc. #217.

1-15-80 Judgment dtd. 1-15-80 approved by J. Dooling that pltff is a qualified provider of medicaid services and provides medically necessary abortional services to medicaid eligible women, that deft continue to authorize the expenditure of federal matching funds for medically necessary abortions etc., see judgment, filed. fy

1-15-80 By DOOLING, J.—Order dtd. 1-15-80 staying enforcement of judgment for 30 days from 1-15-80 filed. fy

1-15-80 Notice of appeal filed by USA to Supreme Court. copies mailed to parties & Sup. Ct. fy

DATE	PROCEEDINGS
1-28-80	Notice of appeal filed to Sup. Ct., by intervenor-defts, copy mailed to Sup. Ct., filed in 76C 1804. fy
1-28-30	Deft-intervenors' aplication for extension of stay pending appeal, filed in 76C 1804. fy
1-31-80	Notice of motion ret. 2-4-80 with memo of law for an extension of the stay pending final determination of the appeal by the US Supreme Court filed in 76 C 1804. fy
2-25-80	Certified copy of order from Supreme Court denying application for stay and that probable jurisdiction is noted, etc., filed in 76C 1804. fy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

76C 1804

CORA MCRAE, individually and on behalf of all others similarly situated, PLANNED PARENTHOOD OF NEW YORK CITY, INC.; and IRWIN B. TERAN, M.D., individually and on behalf of all others similarly situated, PLAINTIFFS

v.

F. DAVID MATHEWS, Secretary, United States Department of Health, Education, and Welfare, DEFENDANT.

VERIFIED COMPLAINT
CLASS ACTION

I.

PRELIMINARY STATEMENT

1. This is a civil action for injunctive, declaratory and other relief. Plaintiffs seek (a) a declaration that an amendment ("the Hyde Amendment") to H.R. 14232 (popularly known as the HEW Appropriations Act for Fiscal 1976-77) enacted into law on September 30, 1976 is invalid under the United States Constitution and (b) an injunction against its implementation.

II.

JURISDICTION

2. This court has jurisdiction of the subject matter and parties to this cause by virtue of 28 U.S.C. Sections 1331, 1361, 2201 and 2202. The amount in controversy, exclusive of interest and costs, exceeds $10,000.

3. This case arises under the Social Security Act, the Hyde Amendment, and the First, Fourth, Fifth and Ninth Amendments to the Constitution.

III.

PARTIES

4. Plaintiff Cora McRae is a 24 year old female citizen of the State of New York and the United States. Plaintiff McRae is in the first trimester of pregnancy and has made a decision in consultation with her physician to terminate her pregnancy. Plaintiff has no funds of her own with which to pay for an abortion and is financially dependent upon medical assistance (Medicaid) from the State of New York for all medical care. The defendant is prohibited by the Hyde Amendment from authorizing the expenditure of federal matching funds to pay for abortions requested by and/or performed upon women eligible for Medicaid including specifically the plaintiff.

5. Plaintiff PLANNED PARENTHOOD OF NEW YORK CITY, INC. ("PPNYC") is a § 501(c)(3) tax exempt, not-for-profit corporation incorporated in the State of New York which provides family planning services and first trimester abortion services at its state licensed clinics including one located in the eastern district of New York.

PPNYC provides an average of approximately 300 abortions per month for Medicaid eligible patients. Until the enactment of the Hyde Amendment, PPNYC was reimbursed by Medicaid for the abortions it performed on such patients. The Hyde Amendment prohibits reimbursement from federal funds for the performance of most abortions sought by PPNYC patients who are covered by Medicaid, including plaintiff McRae.

6. Plaintiff Irwin B. Teran, M.D. ("Dr. Teran") is a physician licensed to practice medicine in the State of New York who specializes in obstetrics and gynecology. His offices are at 757 Bushwick Avenue, Brooklyn, New York. Many of his patients are enrolled in the Medicaid

program and he is reimbursed for the full range of obstetrical and gynecological medical services he renders for them. The Hyde Amendment makes it impossible for him to be paid for the medically appropriate treatment of those of his Medicaid patients seeking abortions.

7. Defendant F. David Mathews is Secretary of the Department of Health, Education and Welfare ("HEW"), and as such is responsible for the overall operation and administration of the Department's programs, and for the expenditure of sums appropriated by the Congress for those programs, including Medicaid. He is sued in his official capacity.

IV.

CLASS ACTION ALLEGATIONS

CLASS OF WOMEN

8. Plaintiff McRae sues on her own behalf and on behalf of the entire class of pregnant or potentially pregnant women in the State of New York who are eligible for Medicaid, who with their physician have decided on abortions, for whom abortions are medically appropriate and who are prevented from obtaining medical termination of their pregnancies by the Hyde Amendment "hereinafter "class of women").

9. The action may be maintained as a class action on behalf of the class of women under Rule 23(b)(1)(B) and under Rule 23(b)(2): Under Rule 23(b)(1)(B) because the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests; and under Rule 23(b)(2) because the parties opposing the class have acted or will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

10. The class of women is so numerous that joinder of all members is impractical.

11. Plaintiff McRae will fairly and adequately represent the interests of the class of women. Her attorneys include the general counsel to PPNYC and to the Planned Parenthood Federation of America, Inc., as well as other lawyers who have extensive experience in litigation involving human rights in the field of family planning and abortion. Plaintiff McRae and her attorneys are prepared to carry forward the claims of the representative party to final judgment and to protect the interests of all members of the class of women.

The questions of law and fact which Plaintiff McRae seeks to litigate, in particular the constitutionality of the Hyde Amendment, are common to the class she seeks to represent.

CLASS OF PHYSICIANS

12. Dr. Teran sues on his own behalf and on behalf of the entire class of duly licensed physicians and surgeons certified for participation in Medicaid and presently performing or desiring to perform the termination of pregnancies of members of the above class of women (hereinafter "class of physicians").

13. The action may be maintained as a class action on behalf of the class of physicians under Rule 23(b)(1)(B) and under Rule 23(b)(2): Under Rule 23(b)(1)(B) because the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests; under Rule 23(b)(2) because the parties opposing the class have acted or will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

14. The class of physicians is so numerous that joinder of all members is impracticable.

15. Dr. Teran will fairly and adequately represent the interests of the class of physicians. His attorneys have extensive experience in litigation involving the rights of physicians to practice their profession in accordance with their best medical judgment, especially in the field of family planning and abortion. Dr. Teran and his counsel are prepared to carry his claims forward to final judgment and to protect the interests of all members of the class of physicians.

16. The questions of law and fact which Dr. Teran seeks to litigate, in particular the constitutionality of the Hyde Amendment, are common to the class he seeks to represent.

V.

THE MEDICAID PROGRAM

17. 42 U.S.C. Section 1396 *et seq.* (Title XIX of the Social Security Act), enacted by Congress in 1965, establishes the Medicaid program and authorizes appropriations to enable states to furnish medical assistance to families and individuals whose income and resources are insufficient to meet the costs of medical care and services.

18. New York State implemented the Medicaid program in 1966 by enacting Social Services Law, Article 5, Title 11, establishing a comprehensive program of medical assistance for needy persons. Abortions elected by indigent women upon the advice of duly licensed physicians within 24 weeks of the commencement of their pregnancies are covered by this program.

VI.

THE HYDE AMENDMENT

19. Prior to enactment of the Hyde Amendment, 50% of the cost of abortions performed upon patients in the Eastern District of New York entitled to Medicaid coverage was unconditionally reimbursed from federal funds.

20. The Hyde Amendment provides:

"None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term."

21. The House and Senate Conference Committee with respect to the Hyde Amendment issued a Conference Report (attached hereto and made a part hereof as "Exhibit A") which sets forth certain limited circumstances under which the Committee believes Federal funds may be used to pay for abortions.

22. Under the Hyde Amendment, the defendant Mathews is prohibiting from expending funds to pay for abortions except as stated in paragraph 20 and possibly paragraph 21.

23. As a result of the Hyde Amendment, the plaintiffs and the members of the classes they represent are subjected to immediate and irreparable harm, namely:

(a) Plaintiff McRae has been refused an abortion and believes that others will be similarly refused and that she and the members of the plaintiff class of women will be unable to obtain the abortions they desire without the relief sought in this complaint.

(b) Dr. Teran and members of the class of doctors are not able to afford to perform such abortions without reimbursement and have refused and must continue to refuse this treatment.

(c) Plaintiff PPNYC has announced that beginning October 1st it will refuse to serve Medicaid eligible women who seek abortions and who are unable to pay for them. Plaintiff PPNYC is financially unable to serve such women unless it is assured that Medicaid reimbursement will be forthcoming.

VII.

FIRST CAUSE OF ACTION

24. The Medicaid program in New York State routinely pays with federal, state and city funds the full reasonable costs of all pregnancy related care and services for those eligible women who choose to carry pregnancy to term.

25. Under Title XIX of the Social Security Act, defendant Mathews routinely authorizes reimbursement of a substantial percentage of the cost of all pregnancy related care and services for Medicaid eligible women who choose to carry their pregnancies to term.

26. Under the Hyde Amendment, defendant Mathews is forbidden to reimburse for any portion of the cost of abortion services for most eligible women, including the plaintiff McRae, who choose to terminate their pregnancies by abortion, thus creating an invidious classification which denies to plaintiff and to the class of women the due process and equal protection of the laws guaranteed by the First Amendment to the Constitution.

VIII.

SECOND CAUSE OF ACTION

27. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 26 as though fully set forth herein and further allege as follows:

28. Defendant's denial of federal funds for reimbursement for abortions as a means of terminating pregnancy deprives plaintiff McRae and the class of women of their right to control their own persons, and to privacy and liberty in matters relating to marriage, sex, procreation and the family, all in violation of the Fourth, Fifth and Ninth Amendments to the Constitution.

IX.

THIRD CAUSE OF ACTION

29. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 28 as though fully set forth herein and further allege as follows:

30. Pregnant women who can pay the necessary costs of abortion services can obtain such services during the first two trimesters of pregnancy in New York State.

31. By denying reimbursement for abortion services to Medicaid recipients, defendant has created an invidious classification which denies to the plaintiff McRae and to plaintiff class of women the due process and equal protection of the laws guaranteed by the Fifth Amendment to the Constitution.

X.

FOURTH CAUSE OF ACTION

32. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 31 as though fully set forth herein and further allege as follows:

33. Under Title XIX of the Social Security Act, the Federal government provides matching funds which together with state funds pay the full cost of sterilization operations for Medicaid eligible women.

34. By denying payment for abortion services to Medicaid eligible women, the defendant coerces women who do not want at present to bear a child to carry their pregnancies to term, resort to self-abortion or other high risk alternatives or to be irreversibly sterilized rather than risk a pregnancy which cannot be aborted, all in violation of the due process and equal protection of the laws guaranteed by the Fifth Amendment to the Constitution.

XI.

FIFTH CAUSE OF ACTION

35. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 34 as though fully set forth herein and further allege as follows:

36. Many pregnant women including plaintiff McRae have consulted and will continue to consult Dr. Teran and the class of physicians. For many such women, including plaintiff McRae such physicians would, in the exercise of their best professional judgment, concur in the women's decisions to choose abortion and would perform the abortions sought by such women.

37. Defendant's prohibition of reimbursement to Dr. Teran and members of his class for abortions performed upon Medicaid patients who request them deprives Dr. Teran and plaintiff class of physicians of the right to practice medicine in accordance with their best medical judgment as guaranteed by the First, Fourth, Fifth and Ninth Amendments to the Constitution.

38. The Hyde Amendment infringes upon the right of Dr. Teran and plaintiff class of physicians to give and their patients' right to receive appropriate and adequate medical treatment and advice pertaining to the decision whether to terminate a given pregnancy, in violation of the First, Fourth, Fifth and Ninth Amendments to the Constitution.

39. Prohibition of reimbursement by the defendant deprives Dr. Teran and plaintiff class of physicians of substantial income from abortion services normally rendered to Medicaid eligible women, in violation of the right of Dr. Teran and the class of physicians to render medical services and to receive fees for such services, all without due process of law, in violation of the Fifth Amendment to the Constitution.

XII.

SIXTH CAUSE OF ACTION

40. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 39 as though fully set forth herein and further allege as follows:

41. Many pregnant women have come and will continue to come to PPNYC for abortion services by physicians performing abortions in PPNYC clinics. Denial of reimbursement for abortions for Medicaid eligible women would prevent PPNYC from continuing its program of such medical services and from receiving fees for such services, all without due process of law in violation of the Fifth Amendment to the Constitution.

XIII.

SEVENTH CAUSE OF ACTION

42. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 41 as though fully set forth herein and further allege as follows:

43. The intent and effect of the Hyde Amendment is to force indigent women to carry their pregnancies to term in violation of their constitutionally protected right to privacy.

44. One of the principal grounds stated by Congress for the enactment of the Hyde Amendment is that the use of federal funds for abortion offends the religious beliefs of certain segments of the population.

45. The Hyde Amendment constitutes an establishment of religion in violation of the First Amendment to the Constitution. No secular justification for the restriction has been advanced.

WHEREFORE, Plaintiffs pray:

1. That this court declare that the Hyde Amendment is null and void because it violates the Constitution of the United States.

2. That this court enter preliminary and permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the defendant, his successors in office, agents and employees, and all other persons in active concert and participation with him, from refusing to pay federal matching funds (at the proportionate level and in accord with the standards under which they were being paid before the Hyde Amendment was enacted) for abortions provided to women eligible for Medicaid.

3. That this court render its judgment ordering the defendant to continue to pay federal matching funds for abortions provided to women eligible for Medicaid.

4. That this court award plaintiffs their costs herein and grant them such other further relief as this court may deem just, proper and equitable.

Dated: September 30, 1976

GREENBAUM, WOLFF & ERNST
437 Madison Avenue
New York, New York 10022
Telephone No. (212) 758-4010

By: /s/ Harriet F. Pilpel
HARRIET F. PILPEL
FREDERIC S. NATHAN
LAURENCE VOGEL
EVE W. PAUL
Attorneys for Plaintiff Planned Parenthood of New York City, Inc.

SYLVIA A. LAW
40 Washington Square South
New York, New York 10022
Telephone No. (212) 598-7642

RHONDA COPELON
NANCY STEARNS
Center for Constitutional Rights
853 Broadway
New York, New York 10003
Telephone No. (212) 674-3303

JILL LAURIE GOODMAN
ELLEN LEITZER
JUDITH MEARS
NADINE TAUB
American Civil Liberties Union
22 East 40th Street
New York, New York 10016
Telephone No. (212) 725-1222

By: _____

Attorneys for Women and Doctor Plaintiffs

Of Counsel:

Representative Bella Abzug
252 Seventh Avenue
New York, New York 10001
Telephone No. (212) 620-6701

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ALFRED F. MORAN, being duly sworn, deposes and says that he resides at 90 Springhurst Road, Bedford Hils, New York; that he is the Executive Vice President of PLANNED PARENTHOOD OF NEW YORK CITY, INC., one of the plaintiffs herein; and that he has read the foregoing verified complaint and knows the contents thereof and to the best of his knowledge the same are true except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

ALFRED F. MORAN

Sworn to before me this
day of October, 1976

Notary Public

EXHIBIT A

answered "present" 1, not voting 37, as follows:

[Roll No. 734]

YEAS—324

	Foley	Moffett
	Ford, Mich.	Mollohan
	Fountain	Moorhead, Pa.
	Fraser	Morgan
	Frenzel	Mosher
	Frey	Moss
	Fuqua	Murphy, Ill.
	Gaydos	Murphy, N.Y.
	Gialmo	Murtha
	Gibbons	Myers, Ind.
	Gilman	Natcher
	Ginn	Nedzi
	Goldwater	Nichols
	Gonzalez	Nix
	Grasso	Nowak
	Gray	Oberstar
	Green	Obey
	Grover	O'Brien
	Gude	O'Hara
	Hagedorn	O'Neill
	Hall, Ill.	Passman
	Hamilton	Patten, N.J.
	Hanley	Patterson,
	Hannaford	Calif.
	Harkin	Patterson, N.Y.
	Harrington	Pepper
	Harris	Perkins
	Hawkins	Pettis
	Hays, Ind.	Pickle
	Hechler, W. Va.	Pike
	Heckler, Mass.	Pressler
	Heftel	Preyer
	Hicks	Price
	Hightower	Pritchard
	Hillis	Quie
	Holland	Railsback
	Holtzman	Rangel
	Horton	Rees
	Howard	Regula
	Hughes	Reuss
	Hungate	Richmond
	Hutchinson	Roberts
	Ichord	Rodino
	Jacobs	Roe
	Jarman	Rogers
	Jeffords	Roncalio
	Jenrette	Rooney
	Johnson, Calif.	Rose
	Johnson, Colo.	Rosenthal
	Johnson, Pa.	Rostenkowski
	Jones, Ala.	Roush
	Jones, N.C.	Roybal
	Jones, Okla.	Ryan
	Jordan	St Germain
	Kasten	Santini
	Kastenmeier	Sarasin
	Kelly	Sarbanes
	Keys	Scheuer
	Koch	Schneebeli
	Krebs	Schroeder
	LaFalce	Schulze
	Lagomarsino	Sebelius
	Latta	Seiberling
	Leggett	Sharp
	Lehman	Shipley
	Lent	Shriver
	Levitas	Sikes
	Lloyd, Calif.	Simon
	Long, La.	Sisk
	Long, Md.	Skubitz
	Lujan	Slack
	Lundine	Smith, Iowa
	McCloskey	Smith, Nebr.
	McCormack	Solarz
	McDade	Spellman
	McFall	Spence
	McIntyre	Staggers
	McKay	Stanton,
	McKinney	J. William
	Madden	Stanton,
	Madigan	James V.
	Mann	Stark
	Martin	Steed
	Mathis	Steiger, Wis.
	Matsunaga	Stokes
	Mazzoli	Stratton
	Meeds	Studds
	Melcher	Sullivan
	Metcalfe	Symington
	Meyner	Talcott
	Mezvinsky	Taylor, N.C.
	Michel	Teague
	Mikva	Thompson
	Milford	Thone
	Miller, Calif.	Thornton
	Miller, Ohio	Traxler
	Mills	Treen
	Mineta	Tsongas
	Minish	Udall
	Mink	Ullman
	Mitchell, Md.	Van Deerlin
	Mitchell, N.Y.	Vander Veen
	Moakley	Vanik
	Vigorito	Wilson, Bob
	Walsh	Wilson, C. H.
	Wampler	Wilson, Tex.
	Weaver	Winn
	Whalen	Wirth
	White	Wolff
	Whitehurst	Wright
	Wiggins	Wydler
		Wylie
		Yates
		Yatron
		Young, Alaska
		Young, Fla.
		Young, Ga.
		Zablocki
		Zeferetti

NAYS—68

Abdnor	Hammer-	Myers, Pa.
Archer	schmidt	Ottinger
Ashbrook	Henderson	Paul
Bauman	Holt	Poage
Beard, Tenn.	Hubbard	Quillen
Breaux	Hutchinson	Randall
Broyhill	Ichord	Rhodes
Burleson, Tex.	Jones, Tenn.	Robinson
Burlison, Mo.	Kazen	Rousselot
Butler	Kemp	Runnels
Byron	Ketchum	Ruppe
Chappell	Kindness	Satterfield
Clancy	Krueger	Shuster
Clawson, Del	Lloyd, Tenn.	Snyder
Cochran	Lott	Steiger, Ariz.
Collins, Tex.	McDonald	Symms
Crane	McEwen	Taylor, Mo.
Daniel, Dan	Maguire	Treen
Daniel, R. W.	Mahon	Waggonner
de la Garza	Montgomery	Waxman
Devine	Moore	Whitten
Evins, Tenn.	Moorhead,	Young, Tex.
Goodling	Calif.	
Hall, Tex.	Mottl	

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—37

Allen	Forsythe	Neal
AuCoin	Green	Nolan
Beard, R.I.	Haley	Peyser
Bergland	Hansen	Riegle
Bowen	Hébert	Rinaldo
Carter	Heinz	Risenhoover
Chisholm	Helstoski	Russo
Collins, Ill.	Hinshaw	Steelman
Conlan	Howe	Stephens
Erlenborn	Karth	Stuckey
Esch	Landrum	Vander Jagt
Evans, Colo.	McCollister	
Ford, Tenn.	Matsunaga	

The Clerk announced the following pairs:

Mr. Evans of Colorado with Mr. Bowen.
Mr. AuCoin with Mr. Hébert.
Mr. Bergland with Mr. Landrum.
Mr. Beard of Rhode Island with Mr. Conlan.
Mr. Helstoski with Mr. Hansen.
Mr. Neal with Mr. McCollister.
Mr. Russo with Mr. Rinaldo.
Mr. Risenhoover with Mr. Erlenborn.
Mr. Nolan with Mr. Carter.
Mr. Riegle with Mr. Steelman.
Mr. Esch with Mr. Stuckey.
Mr. Green with Mr. Matsunaga.
Mrs. Chisholm with Mr. Peyser.
Mr. Vander Jagt with Mr. Howe.
Mrs. Collins of Illinois with Mr. Ford of Tennessee.
Mr. Forsythe with Mr. Stephens.
Mr. Heinz with Mr. Haley.
Mr. Allen with Mr. Karth.

Mr. MOFFETT changed his vote from "nay" to "yea."

Messrs. RHODES, BUTLER, YOUNG of Texas, and KEMP changed their votes from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ROGERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill, H.R. 10493, just passed.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

REQUEST FOR CONSIDERATION OF S. 3219

Mr. ROGERS. Mr. Speaker, I ask unanimous consent for the immediate consideration of the Senate bill (S. 3219) to amend the Clean Air Act, as amended.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

Mr. ROUSSELOT. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

CONFERENCE REPORT ON H.R. 14232. MAKING APPROPRIATIONS FOR DEPARTMENTS OF LABOR, HEW, AND RELATED AGENCIES

Mr. FLOOD submitted the following conference report and statement on the bill (H.R. 14232) making appropriations for the Departments of Labor, Health, Education, and Welfare, and related agencies for the fiscal year ending September 30, 1977, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 94-1555)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate numbered 68 to the bill (H.R. 14232) "making appropriations for the Departments of Labor and Health, Education, and Welfare, and Related Agencies for the fiscal year ending September 30, 1977, and for other purposes," having met, after further full and free conference, have been unable to agree.

DANIEL J. FLOOD,
NEAL SMITH,
EDWARD J. PATTEN,
DAVID R. OBEY,
EDWARD R. ROYBAL,
JOSEPH D. EARLY,
GEORGE MAHON,
ROBERT H. MICHEL,
GARNER E. SHRIVER,
SILVIO O. CONTE,
ELFORD A. CEDERBERG,
Managers on the Part of the House.

WARREN G. MAGNUSON,
JOHN C. STENNIS,
ROBERT C. BYRD,
WILLIAM PROXMIRE,
JOSEPH M. MONTOYA,
ERNEST F. HOLLINGS,
THOMAS F. EAGLETON,
BIRCH BAYH,
LAWTON CHILES,
JOHN L. MCCLELLAN,
EDWARD W. BROOKE,
CLIFFORD P. CASE,
HIRAM L. FONG,
TED STEVENS,
RICHARD S. SCHWEIKER,
MILTON R. YOUNG,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the further conference on the disagreeing votes of the two Houses on the amendment of the Senate numbered 68 to the bill (H.R. 14232) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies for the fiscal year ending September 30, 1977, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

BEST COPY AVAILABLE

TITLE II—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

General provisions

Amendment No. 68: Reported in technical disagreement. The managers on the part of the House will offer a motion as follows:

Restore the matter stricken by said amendment amended to read as follows:

"SEC. 209. None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term."

Section 209 of the House bill contained a prohibition against the use of funds contained in this Act to pay for or to promote or encourage abortions. The Senate bill deleted this provision.

Having met in further conference, agreement has been reached on the issue of whether or not Federal funds may be used to finance abortions. Most certainly, this is a difficult, emotionally-charged issue—one which many believe should be dealt with by the appropriate legislative committees.

Nevertheless, in an effort to resolve this issue and avoid further delay in meeting the vital needs addressed by programs in this bill, a majority of the Conferees have agreed to a modification of the House bill language.

It is the intent of the Conferees to limit the financing of abortions under the Medicaid program to instances where the performance of an abortion is deemed by a physician to be of medical necessity and to prohibit payment for abortions as a method of family planning, or for emotional or social convenience. It is not our intent to preclude payment for abortions when the life of the woman is clearly endangered, as in the case of multiple sclerosis or renal disease, if the pregnancy were carried to term. Nor is it the intent of the Conferees to prohibit medical procedures necessary for the termination of an ectopic pregnancy or for the treatment of rape or incest victims; nor is it intended to prohibit the use of drugs or devices to prevent implantation of the fertilized ovum.

Furthermore, the proposed language would not interfere with or limit Federal aid to medical schools conducting research into, or teaching of, abortion procedures for therapeutic purposes.

The Congress is aware that there are three cases related to this issue to be heard by the Supreme Court this fall, and wishes to make clear that the Congress in its action upon this particular appropriations bill does not intend to prejudge any constitutional questions involved in these cases.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

DANIEL J. FLOOD,
NEAL SMITH,
EDWARD J. PATTEN,
DAVID R. OBEY,
EDWARD R. ROYBAL,
JOSEPH D. EARLY,
GEORGE MAHON,
ROBERT H. MICHEL,
GARNER E. SHRIVER,
SILVIO O. CONTE,
ELFORD A. CEDERBERG,
Managers on the Part of the House.

WARREN G. MAGNUSON,
JOHN C. STENNIS,
ROBERT C. BYRD,
WILLIAM PROXMIRE,
JOSEPH M. MONTOYA,
ERNEST F. HOLLINGS,
THOMAS F. EAGLETON,
BIRCH BAYH,
LAWTON CHILES,
JOHN L. MCCLELLAN,
EDWARD W. BROOKE,
CLIFFORD P. CASE,
HIRAM L. FONG,
TED STEVENS,
DICK SCHWEIKER,
MILTON R. YOUNG,
Managers on the Part of the Senate.

REQUEST FOR PERMISSION TO CONSIDER CONFERENCE REPORT ON H.R. 14232 ON FRIDAY, SEPTEMBER 17, 1976

Mr. FLOOD. Mr. Speaker, I ask unanimous consent that it be in order to consider in the House on Friday, September 17, 1976, the conference report on H.R. 14232, making appropriations for the Departments of Labor, Health, Education, and Welfare and related agencies for the fiscal year ending September 30, 1977, and for other purposes.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, I will yield to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, could I ask the gentleman from Pennsylvania if it is his intention to bring up the conference report on Friday? This does include the Hyde amendment, which is the subject of some interest.

Mr. FLOOD. It is just a conference report. Actually, we get the Hyde amendment, which is Senate amendment No. 68 in disagreement.

Mr. BAUMAN. It will be brought up on Friday?

Mr. FLOOD. As I understand, yes. That is my purpose in making the request.

Mr. ROUSSELOT. Further reserving the right to object, my understanding is that this was originally scheduled for Monday. Can the gentleman tell us why we have moved it up?

Mr. FLOOD. I did not know it was originally scheduled for Monday. I did not know that.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

Mr. CLANCY. Mr. Speaker, reserving the right to object, would the chairman advise us as to why this matter was decided to be brought up on Friday?

Mr. FLOOD. I do not know. I talked to the leadership on both sides.

Mr. CLANCY. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

CONFERENCE REPORT ON H.R. 13035, SEA GRANT PROGRAM IMPROVEMENT ACT OF 1976

Mr. BREAUX (on behalf of Mrs. SULLIVAN) filed the following conference report and statement on the bill (H.R. 13035) to amend the National Sea Grant College and Program Act of 1966:

CONFERENCE REPORT (H. REPT. No. 94-1556)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13035) to amend the National Sea Grant College and Program Act of 1966, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Sea Grant Program Improvement Act of 1976".

SEC. 2. AMENDMENT TO THE NATIONAL SEA GRANT COLLEGE AND PROGRAM ACT OF 1966.

Title II of the Marine Resources and Engineering Development Act of 1966 (33 U.S.C. 1101 et seq.) is amended to read as follows:

"TITLE II—NATIONAL SEA GRANT PROGRAM

"SEC. 201. SHORT TITLE.

"This title may be cited as the 'National Sea Grant Program Act'.

"SEC. 202. DECLARATION OF POLICY.

"(a) FINDINGS.—The Congress finds and declares the following:

"(1) The vitality of the Nation and the quality of life of its citizens depend increasingly on the understanding, assessment, development, utilization, and conservation of ocean and coastal resources. These resources supply food, energy, and minerals and contribute to human health, the quality of the environment, national security, and the enhancement of commerce.

"(2) The understanding, assessment, development, utilization, and conservation of such resources require a broad commitment and an intense involvement on the part of the Federal Government in continuing partnership with State and local governments, private industry, universities, organizations, and individuals concerned with or affected by ocean and coastal resources.

"(3) The National Oceanic and Atmospheric Administration, through the national sea grant program, offers the most suitable locus and means for such commitment and involvement through the promotion of activities that will result in greater such understanding, assessment, development, utilization, and conservation. Continued and increased Federal support of the establishment, development, and operation of programs and projects by sea grant colleges, sea grant regional consortia, institutions of higher education, institutes, laboratories, and other appropriate public and private entities is the most cost-effective way to promote such activities.

(b) OBJECTIVE.—The objective of this title is to increase the understanding, assessment, development, utilization, and conservation of the Nation's ocean and coastal resources by providing assistance to promote a strong educational base, responsive research and training activities, and broad and prompt dissemination of knowledge and techniques.

"(c) PURPOSE.—It is the purpose of the Congress to achieve the objective of this title by extending and strengthening the national sea grant program, initially established in 1966, to promote research, education, training, and advisory service activities in fields related to ocean and coastal resources.

"SEC. 203. DEFINITIONS.

"As used in this title—

"(1) The term 'Administration' means the National Oceanic and Atmospheric Administration.

"(2) The term 'Administrator' means the Administrator of the National Oceanic and Atmospheric Administration.

"(3) The term 'Director' means the Director of the national sea grant program, appointed pursuant to section 204(b).

"(4) The term 'field related to ocean and coastal resources' means any discipline or field (including marine science (and the physical, natural, and biological sciences, and engineering, included therein), marine technology, education, economics, sociology, communications, planning, law, international affairs, and public administration) which is concerned with or likely to improve the understanding, assessment, development, utilization, or conservation of ocean and coastal resources.

"(5) The term 'includes' and variants thereof should be read as if the phrase 'but is not limited to' were also set forth.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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76 Civ. 1805

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, PLAINTIFF

v.

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT

VERIFIED COMPLAINT

PRELIMINARY STATEMENT

1. This is a civil action for injunctive, declaratory and other relief. Plaintiff seeks (a) a declaration that an amendment ("the Hyde Amendment") to HR 14232 Bill (popularly known as the HEW Appropriations Act for Fiscal 1976-77), which prohibits any of the funds appropriated therein from being used to perform abortions except where the life of the mother would be endangered if the fetus were carried to full term, and which was enacted into law on September 30, 1976 is invalid under the United States Constitution and (b) an injunction against its implementation.

JURISDICTION

2. Jurisdiction of the subject matter and the parties to this action is conferred upon this Court by 28 U.S.C. 1331, 1361, 2201, and 2202. The amount in controversy, exclusive of interests and costs, exceeds $10,000.

PARTIES

3. The New York City Health and Hospitals Corporation (hereinafter the "Corporation") is a public benefit corporation, organized pursuant to Section 7381, *et seq.* of the Unconsolidated Laws of New York, and charged with the duty of providing high quality, dignified and comprehensive health and medical services and with operating municipal health facilities in order to protect and promote the health, welfare and safety of the people of the City of New York, particularly those who can least afford such services. The Corporation presently operates 16 municipal hospitals, three Neighborhood Family Care Centers, and other health care facilities.

4. Twelve of the municipal hospitals perform abortions. The entire municipal hospital system provided a total of 10,324 abortions in 1974 for Medicaid eligible patients. (Statistics for 1975 and 1976 are not yet available.) Until the enactment of the Hyde Amendment, the municipal hospitals administered by the Corporation were reimbursed by Medicaid for the abortions they performed on such patients. The Hyde Amendment prohibits reimbursement from federal funds for the performance of most abortions sought by municipal hospital patients who are covered by Medicaid.

5. Defendant F. David Mathews is Secretary of the Department of Health, Education and Welfare ("HEW"), and as such is responsible for the overall operation and administration of the Department's programs, and for the expenditure of sums appropriate by the Congress for those programs, including Medicaid. He is sued in his official capacity.

THE MEDICAID PROGRAM

6. 42 U.S.C. Section 1396 *et seq.* (Title XIX of the Social Security Act), enacted by Congress in 1965, established the Medicaid program and authorizes appropriations to enable states to furnish medical assistance to families and individuals whose income and resources are insufficient to meet the costs of medical care and services

7. New York State implemented the Medicaid program in 1966 by enacting Social Services Law, Article 5, Title 11, establishing a comprehensive program of medical assistance for needy persons. Abortions elected by indigent women upon the advice of duly licensed physicians within 24 weeks of the commencement of their pregnancies are covered by this program.

THE HYDE AMENDMENT

8. Prior to enactment of the Hyde Amendment, 50% of the cost of abortions performed upon Medicaid eligible patients treated at plaintiff's hospitals was unconditionally reimbursed from federal funds.

9. On September 30, 1976, Congress enacted into law the Hyde Amendment, which was attached as a Rider (Section 209) to H.R. 14232, the HEW Appropriations Bill for fiscal year 1977 (October 1, 1976 to September 30, 1977). The Hyde Amendment provides:

> "None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term."

10. The House and Senate Conference Committee with respect to the Hyde Amendment issued a Conference Report (attached to the complaint filed today in the companion case entitled McRae v. Mathews, 76 Civ. [E.D.N.Y.]) which sets forth additional limited circumstances under which federal funds may be used to pay for abortions. These circumstances are limited to when the pregnancy is the result of rape or incest.

11. Under the Hyde Amendment, the defendant Mathews is prohibited from expending federal funds to pay for abortions except as stated in paragraphs 9 and 10.

12. Without these federal matching moneys to pay for abortions, states will have two alternatives: to assume the total cost of each abortion performed upon patients entitled to Medicaid coverage or to refuse to pay for any such abortion.

13. There is an outstanding directive from this Court to the New York State Commissioner of Social Services prohibiting him from refusing Medicaid reimbursement under Section 365-a of the Social Services Law for lawful abortional acts to indigent women who otherwise qualify for medical assistance under that statute and its regulations. *Klein* v. *Nassau County Medical Center*, 409 F. Supp. 731 (three judge court, E.D.N.Y., 1976), appeal docketed No. 75-1749 (May 27, 1976).

14. Upon information and belief, New York State will refuse to pay the Corporation for any such abortions due to the enormous expense involved and the State's traditional financial dependence upon federal moneys to fund Medicaid coverage for all eligible state recipients. Without the matching federal funds, New York State will be unwilling to fulfill its constitutional obligation to provide medical assistance to indigent women seeking elective abortions in the first two trimesters of pregnancy.

15. As a result of the Hyde Amendment, plaintiff Corporation is subjected to immediate and irreparable harm, namely:

(a) The Corporation will suffer an immediate and direct financial loss amounting to full cost or at least 50% of the two million dollars which it now receives as reimbursement for abortions performed in its municipal hospitals. Further, the Corporation will be forced to assume costs amounting to an estimated six million dollars from the shift of Medicaid patients seeking abortions from clinics and private hospitals to the municipal hospitals.

(b) Planned Parenthood of New York City, a New York State not-for-profit corporation which provides family planning services and first trimester abortion services at its licensed clinics, has announced that beginning October 1, 1976 it will refuse to service Medicaid eligible women who seek abortions and who are unable to pay for them. See complaint filed today in companion case of McRae v. Mathews, 76 Civ. (E.D.N.Y.). Upon information and belief, other clinics, physicians, and the proprietary and voluntary hospital will also immediately discontinue provision of abortion services to indigent women. Predictably, the Corporation's hospitals will be asked to provide care to a large number of indigent women no longer able to obtain abortions from these clinics, physicians, proprietary and voluntary hospitals. Unless the relief requested herein is granted, this increasing demand for services at the Corporation's facilities is to borne without help from Medicaid and during a time of severe financial crisis within the municipal hospital system and the entire City. The Corporation will eventually be forced severely to curtail its abortion and/or other medical services. The inevitable result will be delays in the scheduling of abortions and necessarily increased risks to women. The delays will prevent many women from obtaining an abortion at all.

(c) The Corporation will have to bear the immediate increased administrative costs of instituting procedures to identify those abortions in which Medicaid reimbursement may be available because of the threat to the life of the mother or because the pregnancy is the result of incest or rape.

(d) If the Corporation does not have sufficient funds to fulfill its statutory purpose to render quality health care to its indigent female patients who seek elective abortions in the first two trimesters of pregnancy, then it is likely there will be unfortunate social consequences, including a substantial increase in the number of unsafe and illegal abortions performed elsewhere, the birth of unwanted children, some of whom will ultimately become public charges, and increasing illegitimacy and child abuse.

FIRST CAUSE OF ACTION

16. Many pregnant women have sought and will continue to seek abortions in the Corporation's hospitals. For many such women, the physicians in the municipal hospitals would, in the exercise of their best professional judgment, recommend and perform the abortions sought by such women.

17. Defendant's denial of reimbursement to the Corporation for abortions performed upon Medicaid women

who request them unreasonably interferes with the freedom of the Corporation to render that comprehensive and high quality medical care pursuant to its statutory powers and purposes, in violation of due process of law as guaranteed by the Fifth Amendment to the U.S. Constitution.

SECOND CAUSE OF ACTION

18. Plaintiff repeats and realleges all the allegations of paragraph 1 through 17 as though fully set forth herein and further alleges as follows:

19. Public hospitals with obstetric and gynecology services have a duty under the law to provide first and second trimester abortions for women desirous of receiving them.

20. Proprietary and voluntary hospitals have no duty to provide abortions or any other services for which they are not reimbursed.

21. The defendant unfairly disfavors public hospitals and discriminates against the Corporation by withdrawing Medicaid reimbursement for abortion services that the municipal hospitals, unlike the proprietary and voluntary hospitals, are obligated to provide, thus requiring only public hospitals to perform services without fees in violation of the equal protection of the laws guaranteed by the Fifth Amendment to the Constitution.

THIRD CAUSE OF ACTION

22. Plaintiff repeats and realleges all the allegations of paragraph 1 through 21 as though fully set forth herein and further alleges as follows:

23. Denial of reimbursement by the defendant deprives the Corporation of substantial income from abortion services normally rendered to Medicaid eligible women in violation of the right of the Corporation to render medical services and to receive fees for such services, all without due process of law, in violation of the Fifth Amendment to the Constitution.

FOURTH CAUSE OF ACTION

24. Plaintiff repeats and realleges all the allegations of paragraphs 1 through 23 as though fully set forth herein and further alleges as follows:

25. The Hyde Amendment infringes upon the Corporation's right to give and its patient population's right to receive safe and adequate medical treatment and advice pertaining to the decision whether to terminate a given pregnancy, in violation of the First, Fourth, Fifth and Ninth Amendments to the Constitution.

FIFTH CAUSE OF ACTION

26. Plaintiff repeats and realleges all the allegations of paragraphs 1 through 25 as though fully set forth herein and further alleges as follows:

27. Under the Medicaid program, the Federal government provides 90% reimbursement for funding sterilizations, which together with state funds pays the full cost of sterilization operations for Medicaid eligible women.

28. By denying payment for abortion services to Medicaid eligible women, the defendant coerces those indigent women who form part of the population to be served by the Corporation and who do not want at present to bear a child to be irreversibly sterilized rather than risk a pregnancy which cannot be aborted, all in violation of the due process and equal protection of the laws guaranteed by the Fifth Amendment to the Constitution.

SIXTH CAUSE OF ACTION

29. Plaintiff repeats and realleges all the allegations of paragraph 1 through 28 as though fully set forth herein and alleges as follows:

30. The Medicaid program in New York State routinely pays with federal, state and city funds the full reasonable costs of all pregnancy related care and services for those eligible women who choose to carry pregnancy to term.

31. Under the Hyde Amendment, defendant Mathews is forbidden to reimburse for any portion of the cost of abortion services for most Medicaid eligible women who choose to terminate their pregnancies by abortion, thus creating an invidious classification which denies to the class of women, mainly minority, served by the Corporation in its municipal hospitals the due process and equal protection of the laws guaranteed by the Fifth Amendment to the Constitution.

SEVENTH CAUSE OF ACTION

32. Plaintiff repeats and realleges all the allegations of paragraphs 1 through 31 as though fully set forth herein and further alleges as follows:

33. Defendant's denial of federal funds for reimbursement for abortions as a means of terminating pregnancy deprives the class of women, mainly minority, served by the Corporation in its municipal hospitals of their fundamental right to decide whether to bear a child, and to privacy and liberty in matters relating to marriage, sex, procreation and the family, all in violation of the Fourth, Fifth and Ninth Amendments to the Constitution.

EIGHTH CAUSE OF ACTION

34. Plaintiff repeats and realleges all the allegations of paragraphs 1 through 33 as though fully set forth herein and further alleges as follows:

35. Pregnant women who can pay the necessary costs of abortion services can obtain such services during the first two trimesters of pregnancy in New York State.

36. By denying reimbursement for abortion services to Medicaid recipients, defendant has created an invidious classification which denies to the class of women, mainly minority, served by the Corporation in its municipal hospitals the due process and equal protection of the laws guaranteed by the Fifth Amendment to the Constitution.

NINTH CAUSE OF ACTION

37. Plaintiff repeats and realleges all the allegations of paragraphs 1 through 36 as though fully set forth herein and further alleges as follows:

38. The intent and effect of the Hyde Amendment is to force indigent women to carry their pregnancies to term in violation of their constitutionally protected right to privacy.

39. One of the principal grounds stated by Congress for the enactment of the Hyde Amendment is that the use of federal funds for abortion offends the religious beliefs of certain segments of the population.

40. The Hyde Amendment constitutes an establishment of religion in violation of the First Amendment to the Constitution.

RELIEF REQUESTED

WHEREFORE, plaintiff prays that the Court:

1. Assume jurisdiction of this cause pursuant to 28 U.S.C. 1331, 1361, 2201 and 2202.

2. Pending a hearing on the merits, grant a temporary restraining order, enjoining and restraining the defendant, his successors in office, agents and employees, and all persons in active concert and participation with him, from refusing to pay federal matching funds (at the proportionate level they were being paid before the Hyde Amendment was enacted) for abortions provided to women eligible for Medicaid.

3. Declare that the Hyde Amendment is null and void on the ground that it is unconstitutional on its face, and as applied, and enter a final judgment declaring that defendant's refusal to pay federal matching funds for abortions provided to women eligible for Medicaid violates the Constitution of the United States.

4. Enter preliminary and permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining and restraining the defendant, his successors in office, agents and employees, and all other persons in ac-

tive concert and participation with him, from refusing to pay federal matching funds (at the proportionate level they were being paid before the Hyde Amendment was enacted) for abortions provided to women eligible for Medicaid.

5. Award plaintiff its costs and disbursements in this action and grant it such other and further relief as this Court may deem just, proper and equitable.

Dated: New York, New York

October 1, 1976

W. BERNARD RICHLAND
Corporation Counsel

By: /s/ James G. Greilsheimer
JAMES G. GREILSHEIMER
Litigating Assistant
Corporation Counsel

/s/ Ellen K. Sawyer
ELLEN K. SAWYER
Assistant Corporation
Counsel

Office and P.O. Address
Municipal Building
New York, New York 10007
Tel. 566-5500 or 2197

VERIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Dr. JOHN L. S. HOLLOMAN, Jr. being duly sworn, says that he is President of the New York City Health and Hospitals Corporation, plaintiff herein. That the foregoing complaint is true to his knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true. That the grounds of his belief as to all matters not therein stated upon his own knowledge are as follows: Information obtained from books and records of the New York City Health and Hospitals Corporation and from statements made to him by certain officers or agents of the aforesaid Corporation.

/s/ John L. S. Holloman, Jr.
DR. JOHN L. S. HOLLOMAN, JR.

Sworn to before me this
30th day of September, 1976

/s/ Sidney Schutz
SIDNEY SCHUTZ
Notary Public, State of New York
Qualified in Bronx County
Registration No. 8864475
Term Expires March 30, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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76 Civ. 1804 (JFD)

CORA MCRAE, JANE DOE, MARY DOE, SUSAN ROE, ANN MOE, individually and on behalf of all others similarly situated; PLANNED PARENTHOOD OF NEW YORK CITY, INC.; and IRWIN B. TERAN, M.D., JANE HODGSON, M.D., DAVID B. BINGHAM, M.D., HUGH SAVAGE, M.D., individually and on behalf of all others similarly situated; WOMEN'S DIVISION OF THE BOARD OF GLOBAL MINISTRIES of the UNITED METHODIST CHURCH, THERESSA HOOVER, its ASSOCIATE GENERAL SECRETARY, ELLEN KIRBY, its EXECUTIVE DIRECTOR, PLAINTIFFS

-against-

JOSEPH A. CALIFANO, JR., Secretary, United States Department of Health, Education and Welfare, DEFENDANT

PLAINTIFFS' AND PROPOSED INTERVENORS' AMENDED COMPLAINT

CLASS ACTION

I

PRELIMINARY STATEMENT

1. This is a civil action for injunctive, declaratory and other relief. Plaintiffs seek a declaration that the enactment and implementation of an amendment ("the 1977 Hyde Amendment") to P.L. 94-439 (popularly known as the HEW Appropriations Act for Fiscal 1976-77) enacted into law on September 30, 1976 is invalid under Title 19

of the Social Security Act and the United States Constitution. In addition, plaintiffs seek (a) a declaration that the enactment and implementation of a superseding rider to P.L. 95-205 (popularly known as a continuing resolution authorizing HEW Appropriations for Fiscal 1977-78 and hereinafter referred to as the "1978 Hyde Amendment") enacted into law on December 10, 1977 is invalid under Title 19 of the Social Security Act and the United States Constitution and (b) an injunction against its implementation. Plaintiffs further seek damages for funds wrongfully withheld under the 1977 and 1978 Hyde Amendments (hereinafter the "Hyde Amendments").

II.

JURISDICTION

2. This Court has jurisdiction of the subject matter and parties to this cause by virtue of 28 U.S.C. Sections 1331, 1361, 2201 and 2202. The amount in controversy, exclusive of interest and costs, exceeds $10,000.

3. This case arises under the Social Security Act, the 1977 and the 1978 Hyde Amendments, and the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

III.

PARTIES

4. Plaintiff CORA McRAE at the institution of this action was a twenty-four-old female citizen of the State of New York and the United States. Plaintiff McRAE was in the first trimester of pregnancy and had made a decision in consultation with her physician to terminate her pregnancy. Plaintiff had no funds of her own with which to pay for an abortion and was financially dependent upon medical assistance (Medicaid) from the State of New York for all medical care. On the basis of the enactment of the 1977 Hyde Amendment plaintiff was

refused an abortion because of fear that Medicaid reimbursement would be withheld.

5. At the time of filing her intervenor's complaint, plaintiff MARY DOE was a nineteen-year-old female citizen of the State of Connecticut and the United States. She was unmarried and had four children, aged five years, four years, three years and eleven months old. Plaintiff MARY DOE was in her second trimester of pregnancy. She was suffering from an overt depression and had stated that she might attempt suicide if she could not obtain an abortion. Her physician, named plaintiff David B. Bingham, M.D., had determined that an abortion was medically necessary for her, but could not certify her pregnancy as life-endangering. Plaintiff had no funds of her own with which to pay for an abortion and was financially dependent upon medical assistance (Medicaid) from the State of Connecticut for all medical care.

6. At the time of the filing of her intervenor's complaint plaintiff JANE DOE was a twenty-five-year-old female citizen of the State of Minnesota and the United States. Plaintiff JANE DOE was in her first trimester of pregnancy. She suffers from a serious case of phlebitis, a condition which would be greatly aggravated by carrying her pregnancy to term. Her physician, named plaintiff Jane Hodgson, M.D., had determined that an abortion was medically necessary for her because of the increased risk of blood clots which may cause permanent health problems and even death, but did not believe she could certify her for an abortion under the 1977 Hyde Amendment. Plaintiff had no funds of her own with which to pay for an abortion and was financially dependen upon medical assistance (Medicaid) from the State of Minnesota for all medical care.

7. Plaintiff SUSAN ROE is a nineteen-year-old native American Indian women who is a citizen of the State of Minnesota and the United States. Plaintiff SUSAN ROE is in her second trimester of pregnancy. She is unmarried and became pregnant four weeks after the birth of her one child. She is suffering from severe emotional trauma and is threatened with severe and long-lasting mental health damage should the pregnancy continue to term.

In addition, the rapid succession of pregnancies threatens substantial harm to her physical health and to the physical and mental capacity of any afterborn child. Her physician, named plaintiff Jane Hodgson, M.D., has determined that an abortion is medically necessary for her but cannot certify it as meeting the standard of either the 1977 or 1978 Hyde Amendment. Plaintiff has no funds of her own with which to pay for an abortion and is financially dependent upon medical assistance (Medicaid) from the State of Minnesota for all medical care.

8. Plaintiff ANN MOE is a fifteen-year-old citizen of the State of Minnesota and the United States. Plaintiff ANN MOE is eleven weeks pregnant. She is unmarried and has a long history of hospitalizations for severe mental illness. She is threatened with severe and longlasting mental health damage should she be forced to continue her pregnancy to term. In addition, she is threatened with all the physical health risks attendant to a teenage pregnancy. Her physician, named plaintiff Jane Hodgson, M.D., has determined that an abortion is medically necessary for her but cannot certify her under either the 1977 or 1978 Hyde Amendment standards. In particular, with respect to severe and longlasting health damage, Dr. Hodgson is unable to obtain the concurrence of plaintiff MOE's family physician, and expects from past experience that any certification would be rejected. Plaintiff ANN MOE has no funds of her own with which to pay for an abortion and is financially dependent upon medical assistance (Medicaid) from the State of Minnesota for all medical care.

9. Plaintiff PLANNED PARENTHOOD OF NEW YORK CITY, INC. ("PPNYC"), is a § 501(c)(3) tax exempt, not-for-profit corporation incorporated in the State of New York which provides family planning services and first trimester abortion services at its state licensed clinics including one located in the eastern district of New York.

PPNYC provides an average of approximately 300 abortions per month for Medicaid eligible patients. The Hyde Amendments prohibit reimbursement from federal

funds for the performance of most abortions sought by PPNYC patients who are covered by Medicaid including Plaintiff McRae. Although the State of New York has continued to reimburse PPNYC from state and local funds for all medically necessary abortions it provides for its patients, the Hyde Amendments have placed such reimbursement in jeopardy.

10. Plaintiff Irwin B. Teran, M.D., is a physician licensed to practice medicine in the State of New York who specializes in obstetrics and gynecology. His offices are at 757 Bushwick Avenue, Brooklyn, New York. Many of his patients are enrolled in the Medicaid program and he is reimbursed for the full range of obstetrical and gynecological medical services he renders for them. Federal matching funds are provided for all such services except for those abortions which fail to qualify under the Hyde Amendments.

11. Plaintiff Jane Hodgson, M.D., is a physician licensed to practice medicine in the State of Minnesota who specializes in obstetrics and gynecology. Her offices are at St. Paul-Ramsey Hospital, 640 Jackson Street, St. Paul, Minnesota. Many of her patients are enrolled in the Medicaid program and she is reimbursed for the obstetrical and gynecological medical services she renders for them. Subsequent to the implementation of the 1977 Hyde Amendment, Minnesota has refused reimbursement for all abortions except those where the pregnancy is certified as life-endangering.

12. Plaintiff David B. Bingham, M.D., is a physician licensed to practice medicine in the State of Connecticut who specializes in obstetrics and gynecology. His offices are at 159 Sachem Street, Norwich, Connecticut. Many of his patients are enrolled in the Medicaid program and he is reimbursed for the obstetrical and gynecological medical services he renders for them. Subsequent to the implementation of the 1977 Hyde Amendment, Connecticut has refused Medicaid reimbursement for all abortions except those where the pregnancy is certified and approved in advance as life-endangering.

13. Plaintiff Hugh Savage, M.D., is a physician licensed to practice medicine in the State of Texas. His offices are at 1201 West Presidio, Fort Worth, Texas. Many of his patients are low-income women who would, except for the Hyde Amendments, be eligible for federally funded abortions paid for either under Medicaid or Title XX of the Social Security Act. Subsequent to the implementation of the 1977 Hyde Amendment, Texas refuses to reimburse for any abortion except those where the pregnancy is certified and approved in advance as life-endangering.

14. Plaintiff Edgar N. Jackson, M.D., is a physician licensed to practice medicine in the State of Georgia who specializes in obstetrics and gynecology. His offices are at 384 Peachtree Street, N.E., Atlanta, Georgia. Many of his patients are enrolled in the Medicaid program and he is reimbursed for the obstetrical and gynecological medical services he renders for them. Subsequent to the implementation of the 1977 Hyde Amendment, Georgia has refused Medicaid reimbursement for all abortions except those where the pregnancy is certified as life-endangering.

15. Plaintiff Lewis H. Koplik, M.D., is a physician licensed to practice medicine in the State of New Mexico who specializes in obstetrics and gynecology. His offices are at 107 Girard Boulevard, S.E., Albuquerque, New Mexico. Many of his patients are low-income women who would, except for the Hyde Amendments, be eligible for federally funded abortions paid for under Medicaid or Title XX of the Social Security Act. Subsequent to the implementation of the 1977 Hyde Amendment, New Mexico has refused to reimburse for any abortions except for those where the pregnancy is certified as life-endangering.

16. The Women's Division of the Board of Global Ministries of the United Methodist Church (hereafter Women's Division) is the policy-making body for United Methodist Women comprising 1.2 million women living in every state and the District of Columbia. The Women's Division sues on behalf of itself and the membership of United Methodist Women among whom are poor, pregnant women who are dependent on Medicaid to obtain safe, legal abortions, whose ability to obtain

such is impeded or precluded by the Hyde Amendments and who object to having someone else's religious beliefs about abortion imposed upon them thereby inhibiting their freedom of conscience. The membership of United Methodist Women also includes federal taxpayers who object to the Hyde Amendments as violating the First Amendment's limitations on the taxing and spending powers, Article 1, Section 8 of the Constitution.

17. THERESSA HOOVER, a citizen of the United States resides in New York City and is ASSOCIATE GENERAL SECRETARY OF THE WOMEN'S DIVISION. She adheres to the Methodist teaching that Methodist women have a religious right and duty to decide in accordance with the principle of responsible parenthood, whether or not to terminate a pregnancy. She is a federal taxpayer who objects to the Hyde Amendments' restrictions on federal funding for abortion as embodying and advancing a different religious belief about abortion. She objects to having her tax funds expended on the basis of this different religious view of abortion, and with the intent and effect of manipulating poor women's determination about responsible parenthood. She also objects to the additional social, human and tax costs which the Hyde Amendment requires for the continuation of unwanted pregnancies, and for medical complications resulting from self-induced abortions or from the forced continuation of unwanted life and health-threatening pregnancies.

18. ELLEN KIRBY is a citizen of the United States, resides in Brooklyn, New York and is EXECUTIVE DIRECTOR OF THE WOMEN'S DIVISION. She adheres to the Methodist teaching that Methodist women have a religious right and duty to decide in accordance with the principle of responsible parenthood, whether or not to terminate a pregnancy. She is a federal taxpayer who objects to the Hyde Amendments' restrictions on federal funding for abortion as embodying and advancing a different religious belief about abortion. She objects to having her tax funds expended on the basis of this different religious view of abortion, and with the intent and effect of manipulating poor women's determination about responsible parenthood. She also objects to the additional social,

human and tax costs which the Hyde Amendment requires for the continuation of unwanted pregnancies, and for medical complications resulting from self-induced abortions or from the forced continuation of unwanted life- and health-threatening pregnancies.

19. Defendant JOSEPH A. CALIFANO is Secretary of the Department of Health, Education and Welfare ("HEW"), and as such is responsible for the overall operation and administration of the Department's programs and for the expenditure of sums appropriated by the Congress for those programs, including Medicaid. He is sued in his official capacity.

IV.

CLASS ACTION ALLEGATIONS

20. Plaintiffs MCRAE, DOE, DOE, ROE and MOE sue on their own behalf and on behalf of the entire class of pregnant or potentially pregnant women who are eligible for medical assistance provided under their state plans, who with their physicians have decided on abortions; for whom abortions are medically necessary; who have been, are or will be prevented or impeded in obtaining medical termination of their pregnancies by the Hyde Amendments (hereinafter "class of women"). The class includes women of all religious and nonreligious persuasions and beliefs who have, in accordance with the teaching of their religion and/or the dictates of their conscience determined that an abortion is necessary.

21. The action may be maintained as a class action on behalf of the class of women under Rule 23(b)(1)(B) and under Rule 23(b)(2): under Rule 23(b)(1)(B) because the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests; and under Rule 23(b)(2) because the parties opposing the class have acted or will act on

grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

22. The class of women is so numerous that joinder of all members is impracticable.

23. Plaintiffs McRAE, DOE, DOE, ROE and MOE will fairly and adequately represent the interests of the class of women. Their attorneys have extensive experience in litigation involving human rights in the field of family planning and abortion. Plaintiffs and their attorneys are prepared to carry forward the claims of the representative parties to final judgment and to protect the interests of all members of the class of women.

The questions of law and fact which plaintiffs McRAE, DOE, DOE, ROE and MOE seek to liquidate, in particular the legality and constitutionality of the Hyde Amendments and their implementation are common to the class they seek to represent.

V.

CLASS OF PHYSICIANS

24. DR. TERAN, DR. HODGSON, DR. BINGHAM, DR. SAVAGE, DR. JACKSON and DR. KOPLIK sue on their own behalf and on behalf of the entire class of duly licensed and Medicaid certified providers of abortional services to eligible women. Plaintiff physicians are prevented or impeded from performing and/or certifying abortions for these women, because of the lack of Medicaid reimbursement. On rare occasions some of these doctors perform abortions for eligible women without fee and for which they receive no reimbursement (hereinafter "class of physicians").

25. Plaintiff physicians also sue on behalf of their patients as defined in paragraph twenty (20).

26. The action may be maintained as a class action on behalf of the class of physicians under Rule 23(b)(1)(B) and under Rule 23(b)(2): under Rule 23(b)(1)(B) because the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class

which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests; under Rule 23(b)(2) because the parties opposing the class have acted or will act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

27. The class of physicians is so numerous that joinder of all members is impracticable.

28. DR. TERAN, DR. HODGSON, DR. BINGHAM, DR. SAVAGE, DR. JACKSON and DR. KOPLIK will fairly and adequately represent the interests of the class of physicians as well as the class of their pregnant Medicaid-eligible patients. Their attorneys have extensive experience in litigation involving the rights of physicians to practice their profession in accordance with their best medical judgment, especially in the field of family planning and abortion. The named plaintiff doctors and their counsel are prepared to carry their claims forward to final judgment and to protect the interests of all members of the class of physicians and class of patients.

29. The questions of law and fact which the named doctors seek to litigate, in particular the legality and constitutionality of the Hyde Amendments, and their entitlement to damages for reimbursement wrongfully withheld, are common to the class they seek to represent.

VI.

THE MEDICAID PROGRAM

30. 42 U.S.C. Sections 1396 *et seq.* (Title XIX of the Social Security Act) passed by Congress in 1965, establishes the Medicaid Program. Title XIX of the Social Security Act and the implementing regulations require states to provide reimbursement for all medically necessary physician and hospital services, with exceptions not here applicable, to families and individuals whose income and resources are insufficient to meet the costs of medical care and services. With the exception of abortions ex-

cluded by the Hyde Amendments, federal matching funds from 50 to 83% of the cost of covered services are provided to states.

31. In 1967 an amendment to Title XIX was enacted to require the states to establish a comprehensive health program for children under the age of 21, entitled Early and Periodic Screening Diagnosis and Treatment ("EPSDT"). 42 U.S.C. § 1396d(a)(4)(B).

32. With the exception of Arizona, every state has a medical assistance plan which receives federal funds and which reimburses certified providers for the services they perform.

33. With the exception of the Hyde Amendments, Title XIX of the Social Security Act operates on a principle of neutrality with respect to an eligible individual's religious beliefs concerning health care. 42 U.S.C. 1396f provides:

> "§ 1396. Observance of religious beliefs
>
> Nothing in this subchapter shall be construed to require any State which has a plan approved under this subchapter to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parents or guardian objects) thereto on religious grounds."

In addition, the Medicaid program affirmatively covers costs of health care the form of which is dictated by an individual's religious beliefs; see e.g. 45 C.F.R. 249.10 (b)(17)(ii). (authorizing Christian Science Services).

VII.

THE HYDE AMENDMENTS

34. Prior to the implementation of the 1977 Hyde Amendment, federal matching funds were available for all abortions for eligible individuals which a state chose to include in its Medicaid plan. Some states, including New York, provided reimbursement for all abortions for eligible individuals. Other states, including Connecticut and Pennsylvania, limited Medicaid payments to those abortions for eligible individuals that were certified as medically necessary.

35. The 1977 Hyde Amendment, Section 209 of Public Law 94-439, provides that

> "None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term."

36. On October 22, 1976, this Court issued, and on October 29, 1976, reaffirmed, a preliminary injunction against implementation of the 1977 Hyde Amendment on constitutional grounds. On July 29, 1977, the Supreme Court ordered the judgment vacated and the case remanded to this Court for reconsideration in light of *Beal* v. *Doe*, 97 S. Ct. 2366, and *Maher* v. *Roe*, 97 S. Ct. 2376 (1977).

37. On July 28, 1977, this Court vacated the injunction and issued a new temporary restraining order against the implementation of the 1977 Hyde Amendment. This temporary restraining order was lifted on August 4, 1977. Defendant Califano immediately implemented the 1977 Hyde Amendment ("Exhibit A").

38. The Department of Health, Education and Welfare failed to issue and make known any standards, regulations or guidelines which clarify what abortions will be federally reimbursed under the 1977 Hyde Amendment standard.

39. State agencies administering the various state medical assistance programs do not know which abortions will be federally reimbursed under the 1977 Hyde Amendment standard.

40. Medicaid providers and eligible pregnant women do not know which abortions will receive federal reimbursement under the 1977 Hyde Amendment standard.

41. The defendant failed to advise the states of their continuing obligations under Title XIX to reimburse for medically necessary abortions or to enforce the same.

42. In response to implementation of the 1977 Hyde Amendment most states adopted policies limiting reimbursement for abortions for the members of the plaintiff class of women to those cases where it was necessary to terminate a pregnancy which would endanger the life of the woman if the fetus were carried to term.

43. Because of the vagueness of the language of the 1977 Hyde Amendment, the failure of defendant Califano to provide clarifying regulations, and prior approval and other procedural requirements adopted in some states, many women in the plaintiff class have been and continue to be unable to obtain an abortion financed by Medicaid even in situations in which the life of the woman is endangered by the continuation of the pregnancy.

44. On December 10, 1977, the President signed a continuing resolution authorizing Labor-HEW expenditures through fiscal year 1978, containing a rider superseding the 1977 Hyde Amendment (the "1978 Hyde Amendment"). The 1978 Hyde Amendment reads as follows:

> "None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been promptly reported to a law enforcement agency or public health service; or except in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians. Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of ectopic pregnancy. The Secretary shall promptly issue regulations and establish procedures to ensure that the provisions of this section are rigorously enforced."

45. On December 10, 1977, defendant Califano announced the implementation of this amendment by mailing the text of it to all state Medicaid agencies along with a brief interpretative statement ("Exhibit B").

46. On information and belief, as of the filing of this amended complaint, no state, except Alabama, has liberalized its policy on the reimbursement of abortions in response to the 1978 Hyde Amendment.

VIII.

IRREPARABLE INJURY

47. As a result of the Hyde Amendments, the plaintiffs and the members of the classes they represent have been and continue to be subjected to immediate and irreparable harm, namely:

(a) Plaintiffs McRae, Doe, Doe, Roe and Moe and others in the class of women have been and will be refused Medicaid abortions and will be unable to obtain the abortions they desire and/or which are medically necessary without the relief sought in this complaint.

(b) Drs. Teran, Hodgson, Bingham, Savage, Jackson and Koplik and members of the class of physicians are, with rare exceptions, not able to perform such abortions without reimbursement and have refused or will refuse and continue to refuse, this treatment.

(c) Plaintiff PPNYC's ability to serve Medicaid-eligible women who seek abortions and who are unable to pay for them is placed in jeopardy by the

Hyde Amendments. Plaintiff PPNYC will be financially unable to serve such women if Medicaid reimbursement should be cut off.

(d) Plaintiff women and members of their class who are discouraged, impeded and/or prevented from obtaining abortions are subjected to the imposition of one religious-belief about abortion. Some members of the class of plaintiff women and of United Methodist Women are restrained in the free exercise of their religious beliefs that an abortion is necessary or appropriate under the circumstances.

(e) The taxpayer plaintiffs are required to pay for the added cost of services related to carrying unwanted normal pregnancies to term; of treatment of complications arising from self-induced and illegal abortions as well as unwanted health- and life-threatening pregnancies and their effects, and of additional physician consultations and administrative expenses.

IX.

SOCIAL SECURITY ACT CLAIMS

FIRST CAUSE OF ACTION

48. By allowing states to exclude state financed Medicaid reimbursement for medically necessary abortions, including those reimbursable under the Hyde Amendments, defendant Califano violates Title XIX of the Social Security Act which mandates that a state Medicaid plan provide reimbursement for medically necessary hospital and physician services provided to eligible individuals.

SECOND CAUSE OF ACTION

49. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 48.

50. The Hyde Amendments' failure to provide for reimbursement for all medically necessary abortions, and defendant Califano's failure to mandate state coverage for those members of the plaintiff class of women who

are under twenty-one years of age, violates Title XIX of the Social Security Act, 42 U.S.C. § 1396(a)(4)(B), and the regulations promulgated thereunder.

THIRD CAUSE OF ACTION

51. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 50.

52. By permitting the states to eliminate Medicaid reimbursement for abortions whether or not federally reimbursable under the Hyde Amendments, Defendant Califano violates the framework of Title XIX of the Social Security Act, and particularly 42 U.S.C. 1396f, and regulations promulgated pursuant thereto, assuring that Medicaid assistance be provided consonant with and not in violation of a person's religious beliefs except in cases of danger to the public health.

X.

CONSTITUTIONAL CLAIMS OF THE WOMEN PLAINTIFFS: EQUAL PROTECTION, DUE PROCESS AND PRIVACY

FOURTH CAUSE OF ACTION

53. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 52.

54. The enactment or implementation of a Medicaid program which provides payment for all medically necessary physician and hospital services but excludes medically necessary abortion services denies plaintiff class of women equal protection of the laws as guaranteed by the Fifth Amendment to the Constitution.

FIFTH CAUSE OF ACTION

55. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 54.

56. Under the Social Security Act, Defendant Califano routinely authorizes reimbursement of a substantial per-

centage of the cost of all pregnancy related care and services for Medicaid-eligible women who choose to carry their pregnancies to term. Such costs are paid by all states which participate in the Medicaid program.

57. The Hyde Amendments' prohibition of federal reimbursement for the cost of a substantial proportion of medically necessary abortion services for eligible women who seek to terminate their pregnancies by abortion creates an invidious classification which denies plaintiff class of women due process and equal protection of the laws guaranteed by the First, Fourth, Fifth and Ninth Amendments to the Constitution.

SIXTH CAUSE OF ACTION

58. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 57.

59. The enactment or implementation of a Medicaid program which provides payment for all medically necessary physician and hospital services for eligible men but excludes medically necessary abortion services for eligible women constitutes an unlawful discrimination on the basis of sex in violation of the due process and equal protection of the laws guaranteed by the First, Fourth, Fifth and Ninth Amendments to the Constitution.

SEVENTH CAUSE OF ACTION

60. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 59 and further allege as follows:

61. Under the Social Security Act, the federal government provides 90% matching funds which together with state funds pay the full cost of sterilization.

62. By denying payment for medically necessary abortion services to Medicaid-eligible women, the Hyde Amendments operate to coerce women to resort to irreversible sterilization in order to terminate an existing pregnancy and/or to avoid the risk of a future pregnancy which cannot be aborted, all in violation of the due process and equal protection of the laws guaranteed by

the First, Fourth, Fifth and Ninth Amendments to the Constitution.

EIGHTH CAUSE OF ACTION

63. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 62.

64. The Hyde Amendments on their face and as applied are vague and overbroad in violation of plaintiffs' rights under the First, Fourth, Fifth and Ninth Amendments to the Constitution.

NINTH CAUSE OF ACTION

65. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 64.

66. Under the Social Security Act the federal government provides matching funds for all medically necessary procedures covered by state plans and particularly for all pregnancy related services including complications from pregnancy and self-induced or illegal abortions.

67. By denying payment the Hyde Amendments punish pregnant women for whom abortions are medically necessary in violation of the due process and equal protection of the laws guaranteed by the First, Fourth, Ninth and Fifth Amendments to the Constitution.

TENTH CAUSE OF ACTION

68. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 67.

69. The requirement of a two-physician certificate in the 1978 Hyde Amendment impermissibly burdens the fundamental right of plaintiff class of women to obtain an abortion as guaranteed by the First, Fourth, Fifth and Ninth Amendments to the Constitution.

ELEVENTH CAUSE OF ACTION

70. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 69.

71. Pregnant women who can pay the costs of medically necessary abortion services can obtain such services.

72. On their face and as implemented, the Hyde Amendments discourage and prevent doctors from performing abortions necessary to terminate health- and life-threatening pregnancies and encourage them to provide unnecessary and dangerous treatment, such as a D & C (dilation and curettage) or DES (di-ethylstilbestrol) to prevent implantation, thereby causing doctors to engage in conduct which could be deemed malpractice with respect to paying patients.

73. Black and third world women are disproportionately represented among Medicaid-eligible women, and the Hyde Amendments have a disparate impact on their ability to obtain medically necessary abortions.

74. On their face and as applied, the Hyde Amendments' restrictions on funding of medically necessary abortion services to eligible women constitute an invidious and discriminatory classification based on poverty, race and minority status, which deprives and punishes the plaintiff class of women in violation of due process and equal protection of the law guaranteed by the First, Fourth, Fifth and Ninth Amendments to the Constitution.

TWELFTH CAUSE OF ACTION

75. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 74.

76. The reporting requirements of the 1978 Hyde Amendment violate the privacy, due process, and equal protection rights of those members of plaintiff class who are victims of rape or incest in violation of the First, Fourth, Fifth and Ninth Amendments to the Constitution.

XI.

CONSTITUTIONAL CLAIMS OF PHYSICIAN PLAINTIFFS AND PPNYC: EQUAL PROTECTION, DUE PROCESS AND PRIVACY

THIRTEENTH CAUSE OF ACTION

77. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 76.

78. Many pregnant women, including the named plaintiffs, and their class have consulted and will continue to consult Drs. Teran, Hodgson, Bingham, Savage, Jackson, Koplik and the class of physicians and PPNYC. For many such women such physicians would, in the exercise of their best professional judgment, agree that abortions are medically necessary and would perform the abortions sought by such women.

79. Defendant's prohibition of reimbursement to the members of the physician class for such abortions performed upon Medicaid patients who request them deprive plaintiff class of physicians of the right to practice medicine in accordance with their best medical judgment as guaranteed by the First, Fourth, Fifth and Ninth Amendments to the Constitution.

80. The Hyde Amendments infringe upon the right of plaintiffs class of physicians and PPNYC to give and their patients' right to receive necessary medical treatment and advice, in accordance with accepted medical standards, pertaining to the decision whether to terminate a pregnancy, in violation of the First, Fourth, Fifth and Ninth Amendments to the Constitution.

81. Implementation of the Hyde Amendments by the defendant deprives plaintiff class of physicians and PPNYC of substantial income from abortion services normally rendered to Medicaid-eligible women, in violation of the right of members of plaintiff class of physicians and PPNYC to render medical services and to receive fees for such services, all without due process of law, in violation of the Fifth Amendment to the Constitution.

FOURTEENTH CAUSE OF ACTION

82. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 81.

83. The class of physicians is subject to federal and state civil and criminal sanctions for certifications deemed to be improper or fraudulent under the Hyde Amendment standards. There are no sanctions on the class of physicians should they fail to certify a qualifying abortion.

84. The Hyde Amendments are vague and overbroad in violation of plaintiffs' rights under the First, Fourth, Fifth and Ninth Amendments to the Constitution.

FIFTEENTH CAUSE OF ACTION

85. Plaintiffs repeat and reallege all of the allegations of paragraphs 1 through 84.

86. The 1978 Hyde Amendment requires a two-physician certificate in cases where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term.

87. This requirement impermissibly infringes on a doctor's right to practice medicine in accordance with his/her best medical judgment as guaranteed by the First, Fourth, Fifth and Ninth Amendments to the Constitution and is in violation of Title XIX of the Social Security Act.

XII.

ESTABLISHMENT AND FREE EXERCISE CLAIM

SIXTEENTH CAUSE OF ACTION

88. Plaintiffs repeat and reallege all of the alegations of paragraphs 1 through 87.

89. The Hyde Amendments constitute an exercise of the taxing and spending powers of the Congress under Article 1, Section 8 of the Constitution.

90. The purpose and effect of the Hyde Amendments is to impede and/or prevent indigent pregnant women from obtaining abortions.

91. The Hyde Amendments constitute enactment into law of one religious belief respecting abortions and the nature of the fetus and the imposition of that religious view on Medicaid-eligible women who would otherwise choose abortion in accordance with their religious or non-religious beliefs.

92. There is no secular justification for the Hyde Amendments.

93. The enactment of this religious view of abortion into law as exemplified by the Hyde Amendments has created and threatens further excessive entanglement and political divisiveness.

94. The Hyde Amendments discourage, impede and/or prevent plaintiff women and their class from obtaining safe, legal abortions in accordance with the different teachings of the religions to which they adhere and/or with the dictates of their conscience.

95. The Hyde Amendments, on their face and as applied violate the prohibitions of the First Amendment against laws respecting the establishment or religion and interfering with the free exercise thereof.

XIII.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that:

(1) This Court declare that the Hyde Amendments facially and as applied are unconstitutional, null and void.

(2) This Court enter preliminary and permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the defendant, his successors in office, agents and employees, and all other persons in concert with him from giving any effect to the 1978 Hyde Amendment.

(3) This Court, in the alternative, declare that despite the Hyde Amendments, Title XIX of the Social Security Act mandates that states continue to reimburse for medically necessary services, and

(4) This Court enter preliminary and permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure requiring the defendant, his successors in office, agents and employees and all other persons in concert with him to disapprove state Medicaid plans which limit reimbursement for medically necessary abortions.

(5) This Court award damages for reimbursement unlawfully withheld under the Hyde Amendments.

(6) This Court award plaintiffs their costs herein, attorneys fees, and grant them such other and further relief as this Court may deem just, proper and equitable.

Dated: January 5, 1977

GREENBAUM, WOLFF & ERNST
437 Madison Avenue
New York, NY 10022
212/758-4010

By: /s/ Eve W. Paul
HARRIET PILPEL
EVE W. PAUL
FREDERIC S. NATHAN
LAURENCE VOGEL

Attorneys for Plaintiff PLANNED PARENTHOOD OF NEW YORK CITY, INC.

SYLVIA A. LAW
40 Washington Square South
New York, NY 10012
212/598-7642

/s/ Rhonda Copelon
RHONDA COPELON
NANCY STEARNS
Center for Constitutional Rights
853 Broadway
New York, NY 10003
212/674-3303

JANET BENSHOOF
JILL LAURIE GOODMAN
ELLEN LEITZER
NADINE TAUB
American Civil Liberties Union
22 East 40th Street
New York, NY 10016
212/725-1222

By: /s/ Janet Benshoof
JANET BENSHOOF

Attorneys for Women and Doctor Plaintiffs and for the Women's Division of the Board of Global Ministries of The United Methodist Church and its Members.

EXHIBIT "A"

[SEAL]

HEW NEWS

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

FOR IMMEDIATE RELEASE

Thursday, August 4, 1977

Marcus . . (202) 245-6733
Winston . (202) 245-6343

Statement

by

Joseph A. Califano, Jr.

Secretary of Health, Education, and Welfare

Section 209 of Public Law 94-439, the Labor-HEW Appropriation Act of 1977—popularly known as the Hyde Amendment—provides that:

> "None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term."

Last October, a Federal District Court issued an order enjoining the Department from enforcing the Hyde Amendment. That injunction has now been dissolved. Accordingly, the Department will provide Federal financial participation in the cost of abortions only where the attending physician, on the basis of his or her professional judgment, has certified that the abortion is necessary because the life of the mother would be endangered if the fetus were carried to term.

The legislative history of the Hyde Amendment, however, makes clear that the Amendment does not bar funding for certain medical procedures. Specifically, the Conference Committee Report interpreting the Hyde Amendment states as follows:

> "Nor is it the intent of the Conferees to prohibit medical procedures necessary for the termination of an ectopic pregnancy or for the treatment of rape or incest victims; nor is it intended to prohibit the use of drugs or devices to prevent implantation of the fertilized ovum." (HR Rep. No. 95-1555, at p. 3)

Thus Federal funds will continue to be available for such medical procedures. "Treatment for rape or incest victims" is, however, limited for these purposes to prompt treatment before the fact of pregnancy is established. As in all cases, Federal funds for abortions for rape or incest victims will be available where the physician has certified that the life of the mother would be endangered if the fetus were carried to term.

(The Department is transmitting this statement to all State Medicaid agencies, HEW regional offices, Public Health Service Hospitals and grantees, and State medical associations. The statement will be published in the *Federal Register*.)

EXHIBIT "B"

[SEAL]

HEW NEWS

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

FOR IMMEDIATE RELEASE
Saturday, December 10, 1977

Winston: (202) 245-6343

Statement by

Joseph A. Califano, Jr.

Secretary of Health, Education, and Welfare

The President signed a continuing resolution today authorizing Labor-HEW expenditures through the fiscal year 1978. This resolution contains language, which supersedes Section 209 of Public Law 94-439, the Labor-HEW Appropriations Act of 1977. Section 209 has popularly been referred to as the Hyde Amendment.

The new language is as follows:

"*Provided*, That none of the funds provided for in this paragraph shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service; or except in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians.

"Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

"The Secretary shall promptly issue regulations and establish procedures to ensure that the provisions of this section are rigorously enforced."

Accordingly, from this point forward, the Department will provide Federal financial participation in the cost of abortions, including those following rape or incest, where a physician, on the basis of his or her professional judgment, has certified in writing that the abortion is necessary, because the life of the mother would be endangered if the fetus were carried to term or where two physicians, on the basis of their professional judgment, have certified in writing that severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term.

In addition, when a case of rape or incest has been reported promptly to a law enforcement agency or public health service, the Department will provide Federal financial participation in the cost of medical procedures where a physician, on the basis of his or her professional judgment, has certified in writing that such procedures are necessary for the victim of such rape or incest.

Federal funding will also be provided for drugs or devices to prevent implementation of the fertilized ovum and for medical procedures where a physician, on the basis of his or her professional judgment, has certified in writing that such procedures are necessary for the termination of an ectopic pregnancy.

I have asked the General Counsel to prepare regulations and establish procedures as soon as possible to ensure that the foregoing limitations established by Congress are rigorously enforced.

As I promised the Senate during my confirmation hearings, I will carry out the laws passed by the Congress to the best of my ability in this sensitive area, as in all others.

(The Department is transmitting this statement to all State Medicaid agencies, HEW regional offices, Public Health Service Hospitals and grantees, and State medical associations. The statement will be published in the *Federal Register*.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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76 C 1804

CORA MCRAE, ET AL., PLAINTIFFS

—against—

SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, DEFENDANT

—and—

SENATORS JAMES L. BUCKLEY, ET AL., INTERVENOR-DEFENDANTS

JUDGMENT

This action came on for trial before the Court, the Honorable John F. Dooling, Jr., District Judge, presiding, and the issues having been duly tried, and a decision having been duly rendered it is

ORDERED, ADJUDGED and DECLARED that

1. The plaintiffs and plaintiffs intervenors are entitled to maintain this action as a class action pursuant to F.R.C.P. Rule 23(a), (b)(1) and (2) on behalf of medicaid-eligible pregnant women desiring and denied medicaid abortions because of the federal legislation restricting abortion funding, including medicaid-eligible pregnant women whose attending physicians have advised them that abortion is medically necessary in their cases and who have been denied medicaid abortions because of the federal legislation restricting abortion funding, and on behalf of providers of abortions, including providers of medically necessary abortions.

2. Section 209 of Public Law 94-439 of September 30, 1976, 90 Stat. 1434, Section 101 of Public Law 95-205 of December 9, 1977, 91 Stat. 1460, Section 210 of Public Law 95-480 of October 18, 1978, 92 Stat. 1586, and Section 109 of Public Law 96-103 of November 20, 1979,

are unconstitutional as applied to abortions that are necessary in the professional judgment of the pregnant woman's atending physician exercised in the light of all factors, physical, emotional, psychological, familial, and the woman's age, relevant to the health-related well-being of the pregnant woman.

3. Defendant, her successors in office, agents, servants, employees, attorneys and those other persons in active concert and participation with her who receive actual notice of this order by personal service or otherwise.

A. Cease to give effect to Section 209 of Public Law 94-439, Section 101 of Public Law 95-205, Section 210 of Public Law 95-480, and Section 109 of Public Law 96-103 so far as they forbid the making of medicaid payments for abortions performed by qualified medicaid providers in cases in which the abortions are necessary in the professional judgment of the pregnant woman's attending physician;

B. Continue to authorize the expenditure of federal matching funds for medically necessary abortions provided by duly certified providers for medicaid-eligible women at the proportionate level and in accordance with the standard of medical necessity set forth in subparagraph 2 above; and

C. Forthwith communicate the substance of this Judgment to the Regional Directors of the Department of Health, Education and Welfare, with instructions that they promptly disseminate that communication to all State medicaid authorities within their regions, with instructions that they in turn communicate it to all local medicaid authorities and providers of pregnancy-related care to medicaid-eligible women.

Brooklyn, New York
January 15, 1980

Approved
January 15, 1980

Clerk

/s/ John F. Dooling
JOHN F. DOOLING
U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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76 C 1805

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,
PLAINTIFF

—against—

SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, DEFENDANT

JUDGMENT

This action came on for trial before the Court, the Honorable John F. Dooling, Jr., District Judge, presiding, and the issues having been duly tried, and a decision having been duly rendered, it is

ORDERED, ADJUDGED and DECLARED that

1. Plaintiff is a qualified provider of medicaid services and provides medically necessary abortional services to medicaid-eligible women;

2. Section 209 of Public Law 94-439 of September 30, 1976, 90 Stat. 1434, Section 101 of Public Law 95-205 of December 9, 1977, 91 Stat. 1460, Section 210 of Public Law 95-480 of October 18, 1978, 92 Stat. 1586, and Section 109 of Public Law 96-103 of November 20, 1979, are unconstitutional as applied to abortions that are necessary in the professional judgment of the pregnant woman's attending physician exercised in the light of all factors, physical, emotional, psychological, familial and the woman's age, relevant to the health-related well-being of the pregnant woman;

3. Defendant, her successors in office, agents, servants, employees, attorneys and those other persons in active

concert and participation with her who receive actual notice of this order by personal service or otherwise.

A. Cease to give effect to Section 209 of Public Law 94-439, Section 101 of Public Law 95-205, Section 210 of Public Law 95-480, and Section 109 of Public Law 96-103 so far as they forbid the making of medicaid payments for abortions performed by qualified medicaid providers in cases in which the abortions are necessary in the professional judgment of the pregnant woman's attending physician;

B. Continue to authorize the expenditure of federal matching funds for medically necessary abortions provided by duly certified providers for medicaid-eligible women at the proportionate level and in accordance with the standard of medical necessity set forth in subparagraph 2 above; and

C. Forthwith communicate the substance of this Judgment to the Regional Directors of the Department of Health, Education and Welfare, with instructions that they promptly disseminate that communication to all State medicaid authorities within their regions, with instructions that they in turn communicate it to all local medicaid authorities and providers of pregnancy-related care to medicaid-eligible women.

Brooklyn, New York
January 15, 1980

/s/ Richard H. [Illegible]
RICHARD H. [ILLEGIBLE]

Approved

January 15, 1980

/s/ John F. Dooling
JOHN F. DOOLING
U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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76 Civ. 1804

CORA MCRAE, ET AL., PLAINTIFFS

—against—

JOSEPH A. CALIFANO, JR., ET AL., DEFENDANTS

STIPULATION

It is hereby stipulated and agreed by the undersigned parties that the amended complaint in this action filed January 9, 1978, should be amended as follows:

> All allegations and claims should include and incorporate a challenge to the Rider to the 1978-79 HEW-Labor Appropriations Bill passed on October 14, 1978 entitled Public Law 95-480. No responsive pleadings are necessary and all evidence and briefs submitted are hereby deemed to incorporate the new rider.

/s/ Janet Benshoof
JANET BENSHOOF
American Civil Liberties
Union Foundation
22 East 40th Street
New York, New York 10016
For All Plaintiffs

/s/ Richard P. Caro
RICHARD CARO
Assistant United Statets
Attorney for the Eastern
District of New York
225 Cadman Plaza
Brooklyn, New York 11201
For Defendant Califano

/s/ Gerald Bodell
GERALD BODELL
102 East 35th Street
New York, New York 10016
For Defendant-Intervenors
Buckley, et al.

/s/ A. Lawrence Washburn
A. LAWRENCE WASHBURN
117 Pennsylvania Avenue
Brooklyn, New York 11207
For Defendant-Intervenor
Pernicone

So Ordered:

/s/ John F. Dooling
JOHN F. DOOLING
U.S.D.J.

Dated: November 28, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CORA MCRAE, ET AL., PLAINTIFFS

—against—

JOSEPH A. CALIFANO, JR., SECRETARY, UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, DEFENDANT

—and—

SENATOR JAMES L. BUCKLEY, ET AL., INTERVENOR-DEFENDANTS

MEMORANDUM and ORDER

* * * *

2. The defendant Secretary has questioned whether the case is to be considered a class action, in light of the vacatur of the 1976 injunction by the Supreme Court, and plaintiffs show from the record that the successive amendments of the complaint have been made on the basis that the case has been a class suit from the beginning and has been continued as such. The original Memorandum and Order on the injunction motion determined the class and standing issues and it had been assumed that there was no issue on these points. However, it may be best to go over the ground again.

The evidence has left no doubt that the class of Medicaid-eligible women who, with their physicians, have decided to terminate their pregnancies before viability is too numerous for all to be joined in this action, and that the class of providers of the medical service required for the performance of such legal abortion services who are

qualified and willing to render such service is too numerous for all to be joined in the action. The issues of law and the issues of fact relevant to the determination of the issues of law presented by the case are common to all members of each class, and the claims of the plaintiff members of each of the classes are typical of the claims of all other members of the class. The plaintiffs, as they have been represented in this case, have fairly and adequately protected the interests of the classes and will continue to do so. The action is one within Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure. The action has to this date in fact been maintained as a class action and it should continue to be so maintained. The two classes are defined substantially as described in the amended complaint filed January 9, 1978:

1. The class of pregnant or potentially pregnant women who are eligible for medical assistance provided under their state plans, who with their physicians have decided on abortions; for whom abortions are medically necessary; who have been, are or will be prevented or impeded in obtaining medical termination of their pregnancies by Public Law 94-439, Section 209, Public Law 95-205, Section 101, and Public Law 95-480, Section 210. The class includes women of all religious and non-religious persuasions and beliefs who have, in accordance with the teaching of their religion and/or the dictates of their conscience determined that an abortion is necessary; and

2. The class of duly licensed and Medicaid certified providers of abortional services to eligible women who are prevented or impeded from performing and/or certifying abortions for the class of women represented by the plaintiff women because of the lack of Medicaid reimbursement.

3. Counsel will have observed that the page numbering of the transcripts for September 6 and December 4, 1978, duplicates that of earlier transcripts. In order to make certain that there will be no confusion in citation,

I have asked the Court Reporter to renumber the pages of the September 6, 1978 transcript through the conclusion of Congressman Hyde's testimony.

It is so ORDERED.

Brooklyn, New York

January 29, 1979.

/s/ John F. Dooling
JOHN F. DOOLING
U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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76 Civ. 1804 (JFD)

CORA MCRAE, ET AL., PLAINTIFFS

—against—

PATRICIA HARRIS, ET AL., DEFENDANTS

ORDER AMENDING COMPLAINT

Upon the agreement of the parties, it is hereby ordered that the Amended Complaint in this action filed January 9, 1978, shall be amended as follows:

> All allegations and claims shall include and incorporate a challenge to the rider to the Fiscal Year 1980 Labor-HEW Appropriations enacted by joint resolution (H.J. Res. 440), and entitled Pub. L. No. 96-123, § 109.

It is further ordered that no responsive pleadings are necessary and all evidence and briefs submitted are hereby deemed to incorporate the new rider.

/s/ John F. Dooling, Jr.
JOHN F. DOOLING, JR.
U.S.D.J.

Dated: Brooklyn, New York
January 15, 1980

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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76 C 1804

CORA MCRAE, ET AL., PLAINTIFFS

—against—

SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, DEFENDANT

—and—

SENATORS JAMES L. BUCKLEY, ET AL.,
INTERVENOR-DEFENDANTS

ORDER

The parties stipulated the authenticity of Exhibits Nos. 300-454 and 456-471 for identification, and defendant and defendant-intervenors objected to their receipt in evidence on grounds of relevancy and competency; final ruling on their admissibility was reserved until the determination of the case on the merits because a part of the defense contentions was that the dispositive legal issues in the case required decision of the case without reference to the existence or content of the types of material embraced in the exhibits, and plaintiffs contended that the First Amendment issues could not be resolved without considering the nature and content of the exhibits and their place in the movement for the adoption of a "pro-life amendment" and the successive "Hyde Amendments." As indicated by the decision, the objection to the receipt of the exhibits in evidence has been overruled and they have been considered and relied upon to the extent indicated in the decision; to the extent that, the ex-

hibits are or contain hearsay they have not been received and considered for the truth of the matter asserted but have been received and considered on the basis that their publication and dissemination formed a part of the abortion debate and were an element of the ambience of the debate.

It is so ORDERED.

Brooklyn, New York
February 14, 1980

/s/ John F. Dooling, Jr.
JOHN F. DOOLING, JR.
U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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76 Civ.

CORA MCRAE, ET AL., PLAINTIFFS

v.

JOSEPH A. CALIFANO, JR., DEFENDANT

AFFIDAVIT

STATE OF MICHIGAN)
ss.:
COUNTY OF WASHTENAW)

JOHAN W. ELIOT, M.D., having duly affirmed, deposes and says:

1. I am a physician with special skills in health care of women, including the performance of abortions, and have Board certification in Pediatrics and in Preventive Medicine, with specialization in maternal and child health and adolescent medicine. My offices are at the Department of Community Health Services, School of Public Health, University of Michigan, and at 912 North Main Street, Ann Arbor, Michigan. I reside at 1027 Miller Avenue, Ann Arbor, Michigan.

2. I am a member of the class of Medicaid-certified providers of abortional services to Medicaid-eligible women.

3. I am making this Affidavit in support of a temporary restraining order and preliminary injunction to prevent the imminent cut-off of federal reimbursement for abortions if the Hyde amendment is implemented.

4. I am making this Affidavit to call to this Court's attention the impact the implementation of the Hyde Amendment will have in the State of Michigan.

5. Currently in the State of Michigan there is federal reimbursement for abortions for Medicaid-eligible women under Title XIX of the Social Security Act.

6. In 1975 the Michigan State Legislature enacted legislation restricting payment for abortion from Medicaid funds to cases of therapeutic abortion for "medical necessity." The Department of Social Services issued a bulletin on this subject (10/22/75) stating that "documentation of medical necessity" must be provided for therapeutic abortions. The Executive Director of the Washtenaw County League for Planned Parenthood, Carol Peacock, called the Department of Social Services in Lansing to ask what constituted "medical necessity." She was told that this referred to medical conditions only, and did not include emotional or mental health considerations, and that therapeutic abortion applied to "life-death situations" only, where "the mother is in danger of losing her life." Shortly thereafter, the Attorney General of Michigan, Frank Kelley, issued a ruling that the new law was not in conformity with the United States Supreme Court decision in Roe versus Wade, and that the law was therefore judged to be unconstitutional and therefore inoperative. The Hyde amendment passed by Congress under review by this Court bears a considerable resemblance to the Michigan legislation of 1975. I would therefore expect, if it were put in effect, that the Michigan Department of Social Services would issue equally restrictive interpretive regulations. The result would very probably be that nearly all Michigan Medicaid patients needing and desiring an abortion would be denied payment for it under Medicaid.

7. I seek to represent both the claims of the class of doctors, and the claims of the class of pregnant Medicaid-eligible women.

8. I am the Medical Director for the Washtenaw County League for Planned Parenthood Clinic located at 912 North Main Street, Ann Arbor, Michigan. This

clinic is incorporated as a nonprofit medical clinic which provides abortion, contraceptive and minor gynecological care to women, and vasectomy for men. Last year I performed 872 abortions. The clinic performed 2533 abortions. Approximately six percent of these were reimbursed under Title XIX. About six percent of the income of the clinic ($26,600) is from federally reimbursed abortions.

9. If the Hyde Amendment is not restrained, I and other physicians at the Washtenaw County League for Planned Parenthood will have to refuse to do virtually any abortions for Medicaid-eligible women becase the Washtenaw County League for Planned Parenthood will receive no reimbursement, and this agency can afford to do very few free abortions. We shall be denying many poor women abortions I consider medically necessary. However, we would have to increase our fees for all women seeking abortions.

10. I and two other physicians on the staff of the Washtenaw County League for Planned Parenthood treat many pregnant Medicaid-eligible women who seek abortions which are medically necessary for many reasons. For example, I present summaries of five cases:

Case 1.

A 19-year-old woman was threatened with a knife and was raped by an unidentified tall man on a less-traveled residential street, at night. Because there had been a series of rapes in the area within the past month, she was terrified that she might be targeted for further attack if she attempted to report it. Two months later, pregnancy symptoms forced her to seek help. Because she was currently jobless and without income, she was helped to apply for Medicaid. Her abortion was uncomplicated, but she was given supplementary counselling, both before and after the procedure to assist her in emotional adjustment to this traumatic experience.

Case 2.

A 33-year-old mother of three children was furloughed from the state mental hospital, for weekends at home with her family, after nine months of treatment for a cyclic depressive state for which she had been under treatment for several years. Although she had been prepared for her home furlough by fitting with a diaphragm, and used it conscientiously, she became pregnant, apparently on her second visit home. The family had low income, as the husband was only intermittently employed, and the family already received welfare assistance. The patient was much disturbed at discovery of the pregnancy and her doctors judged it definitely inadvisable for her mental health to try to carry the pregnancy to term. With Medicaid support she was promptly given an abortion, with careful counselling. She recovered quickly and well, and seemed to be continuing her progressive mental health improvement when last seen two months later.

Case 3.

A 30-year-old woman was greatly burdened by care of two retarded children. She urgently requested an abortion because she found herself unexpectedly pregnant despite use of an intrauterine device. She feared that this pregnancy might produce another retarded child, and that even if the child were normal, the burdens of care for the two older retarded children would deprive her of time and energy to give the new child the physical care and loving attention needed for normal growth. Her pregnancy was terminated uneventfully, with Medicaid financial assistance, and she was provided with information and referred for a tubal ligation, at her request.

Case 4.

A young woman, 16 years old, came to the clinic in great distress, with knowledge, permission and support of her mother, but without knowledge of her

father or foster brother. She requested an early abortion with deep and bitter regret, as the pregnancy was the result of a momentary lapse of self-control in relation to her foster brother, who was not a blood relation, and with whom she had fallen deeply in love. She recognized that there was no possibility at all of carrying through with a marriage in this situation, and that if the pregnancy were known to her father and foster brother, very severe emotional eactions would ensue which were likely to split the family asunder, with great mental anguish for all. The family was not well off, and was registered already for Medicaid assistance, so that it was possible to terminate this pregnancy in a confidential manner with Medicaid financing. The mental health of this young woman, both present and future, and the integrity of this family, were preserved.

Case 5.

A 14-year-old deaf young woman with juvenile diabetes was brought by her mother for termination of a pregnancy that resulted from a transient affair with a young man who took advantage of this socially handicapped young woman. While the diabetes was under adequate control and a pregnancy could quite possibly have been successfully managed with good and intensive obstetric care, there was clearly increased risk to this young woman and to her infant if the pregnancy were allowed to continue. There would, in addition, have been interruption of her schooling, and impairment of her emotional adjustment, as she was greatly distressed by the reality of her situation and very much wanted the abortion. It was carried out with Medicaid assistance, since her mother was divorced and already receiving welfare assistance.

Minor details of these cases have been altered or omitted so as to make specific identification of persons very unlikely.

These are several examples of abortions which I consider medically necessary, but which I have to refuse to do if the Hyde Amendment is implemented, because the woman's life was not in danger in any of these cases.

11. The Washtenaw County League for Planned Parenthood, of which I am the Medical Director, is the only provider for Medicaid abortions in Washtenaw County, with the exception of a small number of very sick women, whose pregnancies cannot safely be terminated in a clinic. If the Hyde Amendment is implemented, approximately 150 Medicaid-eligible women in the area who need abortions will be denied services per year. The only other provider, the University Hospital, will have great financial difficulty in providing abortions for the very sick women now cared for there, if the Hyde Amendment is implemented. I don't know of any charitable institutions or other organizations which will be able to provide free abortions for all those women who need them, much as they might wish to.

12. I also feel that the unavailability of safe legal abortion will put an unconscionable pressure on poor women to avoid pregnancy at all costs, thereby coercing them into being sterilized, at an earlier age than they might really be ready for this step.

13. I consider the cut-off of federal funds for abortions to be an unconscionable interference with my ability to render necessary medical treatment and the right of my Medicaid-eligible patients to receive it. I consider this impending cut-off of funds to be a violation of my constitutional rights as well as those of my pregnant patients.

14. If a restraining order is not granted by this Court, the Washtenaw County League for Planned Parenthood will suffer irreparable harm, both financially and professionally, in what it will be unable to render some of its patients the medical care they need, and it will lose approximately six percent of its income.

15. Pregnant Medicaid-eligible patients will also suffer irreparable harm if a restraining order is not granted. I believe, in Washtenaw County alone, up to 150 Medi-

caid-eligible women who need abortions will seek cheap, illegal abortions, try to self-abort, or try to carry unwanted and health-threatening pregnancies to term. Deaths and serious health problems are likely to result from these procedures.

16. A temporary restraining order and preliminary injunction was sought previously from this Court, and was granted. This present motion involves new considerations arising from the Supreme Court's order of June 29, 1977. Since the Supreme Court order of June 29, I have not made a similar application to this or any other court.

17. Because of the imminence of the irreparable harm that would be caused by the implementation of the Hyde Amendment, I am advised by my attorneys that it may be necessary to proceed by order to show cause.

WHEREAS, affiant respectfully moves this Court for a temporary and preliminary injunction against the implementation of the Hyde Amendment.

/s/ Johan W. Eliot, M.D.
JOHAN W. ELIOT, M.D.

Affirmed before me this
24th day of July, 1977

DUANE G. WEBER
Notary Public, Washtenaw County, Mich.
My Commission Expires August 18, 1979

/s/ Duane G. Weber
DUANE G. WEBER
Notary Public

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---

76 Civ.

CORA MCRAE, ET AL., PLAINTIFFS

v.

JOSEPH A. CALIFANO, JR., DEFENDANT

AFFIDAVIT

STATE OF CONNECTICUT)
) ss.:
COUNTY OF NEW LONDON)

MARY DOE, being duly sworn deposes and says:

1. I reside at 43 Franklin Street, New London, Connecticut, and I am eligible for Medicaid through the Connecticut Department of Social Services.

2. I am 19 weeks pregnant and want to have an abortion. I am making this Affidavit to intervene and for a temporary restraining order to restrain the implementation of the Hyde Amendment.

3. I am 19 years old. I am not married. I have 4 children, aged 5 years, 4 years, 3 years, and 11 months old.

4. On July 29, 1977, I went to the office of Dr. David Bingham at 159 Sachem Street, Norwich, Connecticut, to request an abortion. He informed me that a new law may prohibit any federal or state reimbursement for abortions except those necesary to save the life of the mother and that they cannot admit me to the hospital to do this operation unless payment to the hospital is made in advance.

5. I cannot afford to pay for an abortion myself, and without Medicaid reimbursement, I cannot obtain a safe, legal abortion.

6. I have been told by Dr. Bingham that he can schedule an abortion for me if the Hyde Amendment does not go into effect and they are assured of reimbursement.

7. If I am unable to obtain an abortion at the hospital, I will try to end the pregnancy in any way I can.

8. If I am unable to end the pregnancy, I believe I may take my own life.

MARY DOE (not my real name)
/s/ Mary Doe

Sworn to before me this
29th day of July, 1977
Norwich, New London County, Connecticut

/s/ Harry Swetsburg
HARRY SWETSBURG
Notary Public

July 29, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---

76 Civ.

CORA MCRAE, ET AL., PLAINTIFFS

v.

JOSEPH A. CALIFANO, JR., DEFENDANT

AFFIDAVIT

STATE OF CONNECTICUT)
) ss.:
COUNTY OF NEW LONDON)

Dr. David B. Bingham, being duly sworn, deposes and says:

1. I am a member of the class of doctors in this action.

2. I am engaged in private practice at 159 Sachem Street, Norwich, Connecticut.

3. I have examined Mary Doe and find she is 19 weeks pregnant. I feel an abortion is medically necessary for her because of an overt depression with suicidal thoughts and because I believe she would try to terminate the pregnancy herself if unable to obtain a safe abortion.

4. If a restraining order is not obtained and the Hyde Amendment goes into effect, I will not be able to do an abortion on Mary Doe because I will be unable to admit her to the hospital without guaranteed payment for the hospitalization.

5. I feel that without an abortion Jane Doe risks serious and permanent health problems if she is forced to carry the pregnancy to term. She is not covered by the Hyde Amendment, however, because I believe I could pre-

vent a suicide, and could prevent fatal complications of a self-induced abortion.

DR. DAVID B. BINGHAM
/s/ Dr. David B. Bingham

Sworn to before me this
29 day of July, 1977
Norwich, New London County, Connecticut

/s/ Harry Swetsburg
HARRY SWETSBURG
Notary Public

July 29, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---

76 Civ.

CORA MCRAE, ET AL., PLAINTIFFS

v.

JOSEPH A. CALIFANO, JR., DEFENDANT

AFFIDAVIT

STATE OF MINNESOTA)
) SS.:
COUNTY OF RAMSEY)

JANE DOE, being duly sworn deposes and says:

1. I reside at 1007 Grove St. Brainerd, Minnesota 56401, and I am eligible for Medicaid through the Minnesota Department of Social Services.

2. I am eight weeks pregnant, and want to have an abortion. I am making this Affidavit to intervene and for a temporary restraining order to restrain the implementation of the Hyde Amendment.

3. I am 25 years old. I am married with four living children. Following the birth of my third child in November of 1976, I developed a serious case of phlebitis from which I have not completely recovered. Carrying another pregnancy to term would greatly aggravate this condition and increase the risk of blood clots to the lung.

4. On July 29, 1977, I went to the Fertility Control Clinic at St. Paul-Ramsey Hospital, St. Paul, Minnesota to request an abortion. They informed me that a new law prohibits any federal reimbursement for abortions except those necessary to save the life of the mother

and that they cannot afford to do this operation free for me.

5. I cannot afford to pay for an abortion myself, and without Medicaid reimbursement, I cannot obtain a safe, legal abortion. According to the doctor, Dr. Jane E. Hodgson, without an abortion I might suffer serious and permanent health problems.

6. I have been told by the Fertility Control Clinic that they can schedule an abortion for me if the Hyde Amendment does not go into effect and they are assured of reimbursement. Without Medicaid I would have to deprive my children of the actual necessities in order to pay for the procedure.

/s/ Jane Doe
JANE DOE

Sworn to before me this
29 day of July, 1977

/s/ Carol J. Muellner
CAROL J. MUELLNER
Notary Public
Ramsey County
My Comm. Expires Nov. 1, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---

76 Civ.

CORA MCRAE, ET AL., PLAINTIFFS

v.

JOSEPH A. CALIFANO, JR., DEFENDANT

AFFIDAVIT

STATE OF MINNESOTA)
) ss.:
COUNTY OF RAMSEY)

DR. JANE E. HODGSON, being duly sworn, deposes and says:

1. I am a member of the class of doctors in this action.

2. I work at the Fertility Control Clinic, St. Paul-Ramsey Hospital, St. Paul, Minnesota.

3. I have examined (Jane Doe) and find she is eight weeks pregnant. I feel an abortion is medically necessary for her because of recent phlebitis.

4. If a restraining order is not obtained and the Hyde Amendment goes into effect, I will not be able to do a free abortion on (Jane Doe) because I will receive no reimbursement.

5. I feel that without an abortion (Jane Doe) risks serious and permanent health problems if she is forced

to carry the pregnancy to term. She is not covered (or I don't think she is covered) by the Hyde Amendment, however, because her life is not endangered.

/s/ Jane E. Hodgson, M.D.
JANE E. HODGSON, M.D.

Sworn to before me this
29 day of July, 1977

/s/ Carol J. Muellner
CAROL J. MUELLNER
Notary Public
Ramsey County
My Comm. Expires Nov. 1, 1978

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CORA MCRAE, ET AL., PLAINTIFFS

—against—

JOSEPH A. CALIFANO, DEFENDANT

STATE OF CONNECTICUT)
)
COUNTY OF)

Dr. Jane E. Hodgson, being duly sworn, deposes and says:

1. I am a named representative of the class of doctors in this action.
2. I am engaged in teaching and clinical practice at St. Paul-Ramsey Hospital, St. Paul, Minn.
3. I have examined 15 yr. old Ann Moe, a resident of Minnesota. She is 11 weeks pregnant. Her family is currently receiving medical assistance and is unable to pay for an abortion.
4. While she might qualify for Medicaid under the exemption for statutory rape, she became pregnant more than two months ago. I do not know what "prompt" reporting means; furthermore the patient refuses to report because of her desire to protect her boy friend.
5. The increased risks of pregnancy in the young teenager are generally known (increased incidence of toxemia, hemorrhage, caesarian section, prematurity, etc.) However I don't believe I could certify as to her life endangerment as required by 1977 Hyde Amendment.

6. I have called the family physician who referred her to me. He is not willing to state that "severe and long lasting physical health damage" would result from the pregnancy. Therefore she cannot be certified under the new 1978 Hyde Amendment.

7. The patient has spent most of the past 3 years in adolescent psychiatric wards and correctional institutions. There have been repeated episodes of running away, poor school attendance, and a diagnosis of schizophrenia.

8. I feel an abortion is medically necessary for Ann Moe because of the increased physical risks of pregnancy for a teen-ager as well as the increased mental risks for one with her unstable past. I believe a compulsory pregnancy would result in severe and long lasting mental health damage.

9. However I am unable to certify her under either the 1977 or 1978 Hyde Amendments standards. I cannot obtain two physician certificates certifying that severe and long lasting physical health damage would result if her pregnancy were carried to term. And even if I could, the interpretation of her application by the Minnesota Medical Assistance Program, Department of Public Welfare is very uncertain to me. On 12-21-77 the Department of Public Welfare rejected my application for abortion of an 18 year old victim of juvenile rheumatoid arthritis already the mother of one. Her application was supported by letters from two physicians as well as the Mayo Clinic. (See attached rejection slip). Whether the Department of Public Welfare is applying 1977 or 1978 standards is uncertain and their interpretations of each law have been inconsistent and arbitrary.

10. While Ann's age (15) should entitle her to come under statutory rape in Minnesota, I am unaware of the exact requirements.

11. Because the St. Paul-Ramsey Hospital will not extend credit to Ann Moe without the assurance of Medic-

aid payment, she will be unable to obtain an abortion and will suffer irreparable harm.

12. I have used a pseudonym for the above name patient in order to preserve her privacy rights.

/s/ Dr. Jane Hodgson
DR. JANE HODGSON

Sworn to before me this
4 day of January 1978.
STATE OF MINNESOTA
COUNTY OF RAMSEY

/s/ Berniece F. Wersal
BERNIECE F. WERSAL
Notary Public, Ramsey County, Minn.
My Commission Expires Feb. 6, 19..

AUTHORIZATION REQUESTED TO: Minnesota Medical Assistance Program, Department of Public Welfare, Box 36119, St. Paul

[redacted]

CLAIM/CREDIT/VOID CONTROL NUMBER

1

IF PICA — TYPEWRITER ALIGNMENT — IF NOT PICA

USE CAPITAL LETTERS ONLY

PATIENT'S NAME

ANE E. HODGSON

PATIENT'S ADDRESS

30 JACKSON STREET

ST. PAUL, MN. 55101

2 PROVIDER ID # 2038611

3 CONTROL NUMBER # 477996 3

4 DATE SUBMITTED 10/07/77

5 PRIOR AUTHORIZATION # 0860844

PATIENT IDENTIFICATION

6 PATIENT'S MEDICAL ASSISTANCE NUMBER 62 2 000 034 2440 101

7 SEX F

8 BIRTHDATE 03/11/59

HOSPITAL AUTHORIZATION

9 SERVICE NAME	10 SERVICE CODE	11 PROPOSED CHARGE	12 APPROVED DENIED	13 AUTHORIZED CHARGE
TERMINATION OF PREGNANCY		$400.00	X	00.00
20 SERVICE NAME	21 SERVICE CODE	22 PROPOSED CHARGE	APPROVED DENIED 24 25	26 AUTHORIZED CHARGE
27 SERVICE NAME	28 SERVICE CODE	29 PROPOSED CHARGE	APPROVED DENIED 31 32	33 AUTHORIZED CHARGE
34 SERVICE NAME	35 SERVICE CODE	36 PROPOSED CHARGE	APPROVED DENIED 38 39	40 AUTHORIZED CHARGE

41 TOTAL NUMBER OF LINES USED	42 TOTAL PROPOSED CHARGES	43 TOTAL AUTHORIZED CHARGES
	400.00	00.00

EXPLAIN MEDICAL NECESSITY FOR EACH PROCEDURE BELOW

SEE ATTACHED

[redacted] 12-21-77

Reviewed (Vendor Department Use Only)

X [redacted]

Vendor's Signature

SUBMIT ALL COPIES TO ABOVE ADDRESS

116

[SEAL]

SAINT PAUL-RAMSEY HOSPITAL
AND MEDICAL CENTER

Saint Paul, Minnesota 55101
612-221-3718

October 7, 1977

Department of
Obstetrics & Gynecology

Ismail Barrada, M.D.
Charles H. Blomquist, Ph.D.
William F. Dickes, M.D.
Laura E. Edwards, M.D.
Erick Y. Hakanson, M.D.
Jane E. Hodgson, M.D.
Michael F. Koszalka, M.D.
Gary T. Lundborg, M.D.
Bonnie J. Stickles, M.S.N., C.J.

To whom this may concern:

Re:

The above 18 year old patient has been a victim of juvenile rheumatoid arthritis which has incapacitated her to the extent that she required tutoring at home during the last two years of schooling. In November of 1976 she was delivered by cesarean section of a term pregnancy. During her pregnancy she was incapacitated most of the time.

At the present time she was found to be 20 weeks pregnant by ultrasound. Due to menstrual irregularities she did not suspect that she was pregnant until two weeks ago, on 9-26-77, when she was diagnosed as being pregnant at the Mayo Clinic, 3 mo. Subsequently an ultrasound done at St. Paul-Ramsey revealed a 20 week gestation. The patient is requesting interruption of pregnancy on the basis of her pre-existing medical condition. Letters are enclosed from her physician, James E. Brown, as well as a copy of a medical evaluation at the Mayo Clinic written on June 1, 1976.

If this pregnancy is to be terminated, it must be done so immediately because of the advanced stage of the pregnancy.

/s/ Jane E. Hodgson, M.D.
JANE E. HODGSON, M.D.

JEH:mr
Enclosures: 2

Proud, M.D.
Ahrend, M.D.
Brown, M.D.

1515 CHARLES AVENUE
SAINT PAUL
MINN.
55104

October 6, 1977

Dr. Jane Hodgson
640 Jackson Street
St. Paul, Minnesota 55101

Re:

Dear. Dr. Hodgson:

The above named patient has been intermittently under my care for some time. She suffers from chronic active rheumatoid arthritis. This has necessitate usuage of several drugs including Indocin on a regular basis. It is noteable that this drug is contraindicated in pregnancy. It is my understanding that the patient is presently pregnant. I feel that her chronic disease and drug therapy make the pregnancy inimical to both her and the baby's future welfare.

Sincerely

/s/ James E. Brown
JAMES E. BROWN, M.D.

JEB/DHB

[MAYO CLINIC COPY]

June 1, 1976

3-202-951
Harold R. Mundahl, M.D.
1703 Selby Avenue
St. Paul, Minnesota 55104

Dear Doctor Mundahl:

Miss [name deleted] was seen at the Mayo Clinic from May 14, 1976, through May 26, 1976, for an evaluation of her arthritis. Shari does have rheumatoid arthritis which has been present the last three years and currently her knees and feet were giving her the most trouble. She was having one to two hours of morning stiffness. She has been homebound the last two years and has not gone to school, but has received tutoring at home. Her program has consisted of aspirin 6 to 8 tablets a day and she has been on Sterazolidin, Indocin, and Motrin without success and has been on four or five short courses of a cortisone preparation.

Her weight was 125 pounds and blood pressure in the left arm was 100/60. She had mild acne about the face and a warty eruption over the right third toe. The uterus was enlarged 2½ times the normal size. There was synovitis of the elbows, right wrist, right third metacarpohalangeal joint bilaterally and the right third proximal interphalangeal joint and the left second and fourth proximal interphalangeal joints. There was synovitis of the knees and a loose body distal and lateral to the right patella. There was synovitis of the ankles and and metatarsophalangeal joints of the feet. X-ray of the knees did not reveal any bony changes. The hemoglobin was 10.5 mg. per cent (normal 12 to 15) with diminished mean corpuscular volume at 67, normal 84 to 99. The flocculation test for rheumatoid factor was reactive at a titer of 1:40. The erythrocyte sedimentation rate was elevated at 34 mm. in one hour (normal up to 20). The following laboratory tests were within normal limits: electrocardiogram, chest x-ray, urinalysis, white blood count 8,200, platelet count 376,000, serum

protein electrophoresis normal, cervical Papanicolaou smear negative, antinuclear antibody negative, ART serology nonreactive, potassium 3.8 mEq. per liter, calcium 9.3 mg. per cent, glucose 79 mg. per cent, alkaline phosphatase 82 units per liter, serum glutamic oxalacetic transminase 9 units per liter, uric acid 2.9 mg. per cent, and creatinine .8 mg. per cent.

[Name deleted] was instructed in a program of physical therapy and advised to take Ascriptin 3 tablets four times a day for her rheumatoid arthritis. It will continue to be important for her to get an extra amount of rest. The situation at this time is complicated by the fact that she is pregnant. Dr. L. A. Aaro, gynecologist, evaluated [name deleted] on two occasions and on May 26, 1976, he felt that she was at about 10 to 12 weeks gestation, the fetal heart tones were detected and the ultrasound beta scan confirmed the pregnancy.

Because of the pregnancy, I would not consider any other modalities of treatment for the rheumatoid arthritis other than rest, physical therapy, and Ascriptin. If her feet continue to give her difficulty it might be reasonable for her to have metatarsal bars placed on her shoes. If we can be of any further assistance, please contact us.

Sincerely,

D. L. CONN, M.D.

DLC:tjp

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CORA MCRAE, ET AL., PLAINTIFFS

—against—

JOSEPH A. CALIFANO, DEFENDANT

STATE OF CONNECTICUT)
)
COUNTY OF)

ADDENDUM to affidavit of 1-2-78 regarding Susan Roe.

What I have said regarding the uncertainties of interpretation of both the 1977 and 1978 Hyde Amendments by the Minnesota State Welfare Department, applies equally well to Susan Roe. In her case I could not certify that an immediate second pregnancy would be "life-endangering" nor could I obtain two consultants who could certify to "long lasting and serious physical health damage". And if I did obtain such written opinions, they have had no apparent effect upon the final interpretation by the State Welfare Department. (based on my experience with rejection of case referred to in affidavit regarding Ann Moe.)

/s/ Jane E. Hodgson, M.D.
JANE E. HODGSON, M.D.

Sworn to before me this
4th day of January, 1978
STATE OF MINNESOTA
COUNTY OF RAMSEY

/s/ Berniece F. Wersal
BERNIECE F. WERSAL
Notary Public, Ramsey County, Minn.
My Commission Expires Feb. 5, 19..

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CORA MCRAE, ET AL., PLAINTIFFS

—against—

JOSEPH A. CALIFANO, DEFENDANT

STATE OF CONNECTICUT)
) ss.:
COUNTY OF)

Susan Roe, being duly sworn, deposes and says:

(1) I am a Minnesota resident and am receiving Medical Assistance.

(2) Due to contraceptive failure, I am 15 weeks pregnant and want to have an abortion. I am making this affidavit to intervene as a representative class member.

(3) I am 19 years old and am a Native American. I am not married and I have one child 4 months old.

(4) On December 30, 1977 I went to the office of Dr. Jane Hodgson to request an abortion. She informed me that unless I would suffer severe and longlasting physical harm I would not qualify for a Medicaid abortion under the new federal law which went into effect on December 10, 1977. Because I was 15 weeks pregnant, I have been informed that my abortion must be in a hospital.

(5) I cannot afford to pay for an abortion myself, and without Medicaid reimbursement I cannot obtain a safe, legal abortion.

(6) If I am unable to obtain an abortion I cannot go back to finish high school or obtain any kind of employment or control of my life. Furthermore I am fearful of becoming an abusive parent, like some of my friends, if a second pregnancy is forced upon me.

(7) If I am unable to obtain an abortion I believe I will suffer severe and longlasting mental damage which will not only ruin my life, but which will be detrimental to the future health of my child.

/s/ Susan Roe
SUSAN ROE
(Not my real name)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CORA MCRAE, ET AL., PLAINTIFFS

—against—

JOSEPH A. CALIFANO, DEFENDANT

STATE OF CONNECTICUT)
)
COUNTY OF)

Ann Moe, being duly sworn, deposes and says:

1. I am 15 year old Minnesota resident and am eligible for Medicaid thru my mother who is receiving Medical Assistance.
2. I am 11 weeks pregnant and want to have an abortion. I am making this affidavit to intervene as a representative class member.
3. I am in the 10th grade of school, I do not feel ready to become a mother nor do I want to get married.
4. On January 3rd, 1978 I went to the office of Dr. Jane Hodgson to request an abortion. She informed me that unless I would suffer severe and long-lasting physical health damage, I would not qualify for a Medicaid abortion under the new federal law which went into effect on December 10, 1977. She informed me that under the new federal law Medicaid will reimburse for victims of rape or incest when they are promptly reported, and that I might fit under statutory rape because I am only 15 years old.
5. I was not aware of this law and did not know that I was to report the sexual intercourse to the police or

to a public health service agency. I do not know what a public health service agency is.

6. I would not want to report my boyfriend for fear the police would contact him and he would harm me. Also I do not know what "promptly" means, nor would I want to give my name for fear of publicity.
7. I have spent much of the past three years in psychiatric hospitals and correctional institutions.
8. Neither I nor my mother can afford to pay for an abortion and without Medicaid reimbursement, I cannot obtain a safe, legal abortion.
9. If I am unable to obtain an abortion, I believe I will suffer severe and longlasting mental damage which will not only ruin my life but which will be detrimental to the future health of a child.

/s/ ANN MOE
ANN MOE
(Not my real name)

Sworn to before me this
4 day of January, 1978
with my full knowledge that this
signature is that of a fictitious
name, and not the real name of the
individual—witness of the signature
solely.

STATE OF MINNESOTA
CITY OF SAINT PAUL
COUNTY OF RAMSEY

/s/ BERNIECE F. WERSAL
Notary Public, Ramsey County, Minn.
My Commission Expires Feb. 5, 19...

UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF NEW YORK

CORA MCRAE, ET AL., PLAINTIFFS

—against—

JOSEPH A. CALIFANO, DEFENDANT

STATE OF CONNECTICUT)
) ss.:
COUNTY OF)

Jane E. Hodgson, M.D., being duly sworn, deposes and says:

(1) I am a named representative of the class of doctors in this action.

(2) I am engaged in teaching and clinical practice at St. Paul-Ramsey Hospital at 640 Jackson Street, St. Paul, Minn.

(3) I have examined Susan Roe, a 19 year old native American, and find she is 15 weeks pregnant by ultrasound determination. She is currently on Medicaid and cannot afford to pay for an abortion. Susan was delivered a full term pregnancy on August 22, 1977 having been forced to drop out of school and seek Medical Assistance. Her boy friend, a native American, was also unemployed and unable to help her financially. In spite of contraception Susan conceived for the second time approximately 4 weeks after the birth of her first child. Conception at such a time is extremely rare. Due to breast feeding and total menstrual irregularity she was unaware of the 2nd pregnancy until this week. Upon learning that she is now 15 weeks pregnant she states that she would be physically and mentally unable to care for a second child and that under such circumstances she would be unable to finish high school and find employment.

(4) I feel an abortion is medically necessary for Susan because the resulting emotional and mental trauma of an immediate second child would ruin her life.

(5) It is also possible that severe physical damage could result from such a short interval between pregnancies. Because of insufficient time for uterine involution to take place, risk of complications will be higher than in the usual pregnancy particularly as regards premature labor or low lying placenta (placenta previa).

(6) I am not sure whether she will fit under the current Medicaid restrictions which allow for severe and long lasting physical harm but not for the mental or emotional trauma.

(7) Because she is 15 weeks pregnant, hospitalization is required. Because the hospital will not admit her without assurance of Medicaid payment, she will be unable to obtain an abortion and will suffer irreparable harm, mental, emotional and possible physical damage as well.

(8) I have used a pseudonym for the above named patient in order to preserve her privacy rights.

/s/ Jane E. Hodgson, M.D.
JANE E. HODGSON, M.D.

State of Minnesota
County of Ramsey

Subscribed and sworn to before me
this 2nd day of February, 1978.

/s/ L. R. Mikeworth
L. R. MIKEWORTH

[Illegible]
[Illegible]
My Commission Expires Sept. 26, 1980

UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF NEW YORK

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76 Civ. 1804 (JFD)

CORA MCRAE, ET AL., PLAINTIFFS

—against—

JOSEPH A. CALIFANO, DEFENDANT

PLAINTIFF-INTERVENORS
AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

THERESSA HOOVER, being duly sworn, deposes and says:

1. I reside at 90 LaSalle Street, New York City. I am also the Associate General Secretary, the Chief Executive Officer, and an *ex officio* member of the Board of the Women's Division of the Board of Global Ministries of The United Methodist Church (hereinafter Women's Division), whose offices are located at 475 Riverside Drive, New York, New York. I make this affidavit in support of my motion and that of the Women's Division to intervene as plaintiffs in this action on behalf of itself and the membership of United Methodist Women.

2. The Women's Division is the policy making body of United Methodist Women, which has a membership of 1.2 million women in this country and its territories. The Women's Division is composed of 75 members including 40 representatives nominated by the jurisdiction organizations of The United Methodist Women and elected to membership by the Jurisdictional Conferences (regional)

of The United Methodist Church; 5 presidents of the jurisdiction organization of United Methodist Women; 7 representatives elected by the Board of Global Ministries (1 Bishop, 2 clergy, 2 laymen and 2 laywomen); 13 members elected by the Women's Division; and 10 at-large members invited to membership by the Women's Division in order to assure inclusiveness according to race, socio-economic status and age.

3. The Women's Division decided to seek to become a plaintiff-intervenor in this lawsuit in pursuit of our policy and commitment to preserve religious and conscientious freedom in the matter of abortion, as expressed in our "Resolution on Abortion Rights" adopted in April, 1975 (Exhibit A) and in the "Resolution on Responsible Parenthood" of The United Methodist Church adopted at its 1976 General Conference (Exhibit B). Our commitment to the freedom of conscience in this matter was first made explicit in 1969 when the Women's Division of the then Board of Missions called for the removal of abortion from the criminal code and placement of its regulation under standard codes of medical practice. We have carried that commitment forward as a founding member of the Religious Coalition for Abortion Rights which was organized, as expressed in its Statement of Purpose "To build public awareness of the principle that in a pluralistic society the state should not embody in law one particular religious or moral viewpoint on which widely differing views are held by substantial sections of the religious community."

4. We share the views expressed in The United Methodist Church's "Resolution on Responsible Parenthood" and in the testimony of Dean J. Philip Wogaman, expounding the origin and tenets of that teaching, that "each couple [and each woman] has the right and the duty prayerfully and responsibly to control conception according to their circumstances" and that "the path of mature Christian judgment may indicate the advisability of abortion" where "continuance of a pregnancy . . . endangers the life or health [including 'physical, mental and emotional health'] of the mother, or poses other

serious problems concerning the life, health or mental capability of the child to be."

5. We recognize that the permissibility, advisability and/or necessity of abortion according to circumstance is a matter about which there is diversity of view within as well as beyond our membership, and is a determination which must be ultimately and absolutely entrusted to the conscience of the individual before God. Thus we affirm the fundamental Protestant tradition which respects the right of the Protestant to differ even from the Protestant view and therefore that the Church may not dictate individual choice. Likewise we affirm that the right to choose in a matter such as abortion is an essential component of religious liberty, and, therefore, that the state may not seek to foreclose or burden that choice but must remain neutral.

6. We believe that the battle waging in our nation today to restrict and eliminate this right to abortion is an attempt "to enforce one particular religious belief on those who believe otherwise." (1975 Resolution). This belief, diametrically opposed to our own, views developing human life as a human being and abortion *per se* as immoral, and even tantamount to murder. We respect the rights of those who hold this belief; indeed there are some among our membership who interpret their faith in this way. This country, however, was founded on the principle that no religious belief should be imposed on those who believe otherwise. As the Women's Division, we have a special duty on behalf of our Church and our membership, to resist the attempt of any segment of the population to impose its religious beliefs on all women. Our duty is heightened when the crushing and intolerable blow of religious legislation falls exclusively on poor women.

7. The original Hyde Amendment and the continuing resolution challenged in this case, which severely restrict the occasions for Medicaid or other federal reimbursement for abortion, are founded on and impose on poor women, in slightly compromised form, the restrictive religious belief on abortion, advancing and attempting to

enforce this religious view to the detriment of the United Methodist view.

8. As it affects poor women, these restrictions burden the right of poor women freely to exercise their religion with respect to abortion by foreclosing or burdening their ability to choose abortion over childbearing. For women of the United Methodist faith, the Hyde Amendment impedes exercise of the right and duty to make a decision consistent with the priciples of responsible parenthood. The absence of federal funding for abortion, while funding is supplied for pregnancy and childbirth, has the effect of forcing and pressuring the indigent pregnant woman in the direction of bearing an unwanted child, whether because safe, legal abortion is completely or seemingly inaccessible to her, or because the risk to her very life in self-aborting or obtaining an illegal abortion is too great to run. The pressure the Hyde Amendment exerts upon poor women to resign themselves to unwanted childbearing is fundamentally inconsistent with the teachings of Responsible Parenthood. The other effect of this restriction which makes poor women "targets for exploitation by unskilled abortionists working in unsanitary and illegal facilities" is intolerable butchery and victimization, likewise inconsistent with the ethical teachings of our faith and God's design.

9. The membership of the United Methodist Women includes women who are poor, Medicaid eligible and of childbearing age. On information and belief, there are among the membership at the present time, pregnant Medicaid eligible women who, as a matter of religious practice and in accordance with their conscientious beliefs, would choose but are precluded or discouraged from obtaining abortions reimbursed by Medicaid because of the Hyde Amendment and the resulting and comparable state laws or rules.

10. The membership of the United Methodist Women also includes, in addition to myself, women who pay federal and other taxes who strenously oppose the use of their tax funds thus to manipulate the conduct of poor women in accordance with a religious view alien to them,

and who oppose the added human and social cost as well as the expenditure of tax monies the federal abortion funding restrictions require to pay for the continuation of coerced, unwanted pregancies, and for the treatment of medical complications from illegal or self-induced abortions and/or from the continuation of coerced, unwanted health- and life-threatening pregnancies, and for other additional expenses created by the restrictions.

11. The attached complaint raises the same questions of law and fact as contained in plaintiffs' amended complaint and as heard in the proceedings in this case.

/s/ Theressa Hoover
THERESSA HOOVER

SWORN TO BEFORE ME THIS
4TH DAY OF JANUARY, 1978.

/s/ Jewel J. Tillis
JEWEL J. TILLIS
NOTARY PUBLIC
JEWEL J. TILLIS
NOTARY PUBLIC, State of New York
No. 31-4633663
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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76 Civ. 1804 (JFD)

CORA MCRAE, ET AL., PLAINTIFFS

—against—

JOSEPH A. CALIFANO, DEFENDANT

PLAINTIFF-INTERVENORS
AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ELLEN KIRBY, being duly sworn, deposes and says:

1. I am a citizen of the United States, and reside at 138 Berkeley Place, Brooklyn, New York.

2. I am the Executive Secretary in the Administration of The Women's Division of The Board of Global Ministries of The United Methodist Church (hereinafter Women's Division), whose offices are located at 475 Riverside Drive, New York, New York. This position is elected by the Board of the Women's Division and carries responsibility for women's issues and concerns. I am also a member of the Park Slope United Methodist Church located at Sixth Avenue and Eighth Street in Brooklyn, New York. I pay annual federal, state and local taxes. I make this affidavit in support of my motion to intervene as a plaintiff in this case.

3. I decided to seek to become a plaintiff-intervenor in this lawsuit in pursuit of my commitment to preserve religious and conscientious freedom in the matter of abor-

tion, as expressed in our "Resolution on Abortion Rights" adopted April, 1975 (Exhibit A) and in the "Resolution on Responsible Parenthood" of the United Methodist Church adopted at its 1976 General Conference (Exhibit B). My denomination's commitment to the freedom of conscience in this matter was first made explicit in 1969 when the Women's Division of the then Board of Mission called for the removal of abortion from the criminal code and placement of its regulation under standard codes of medical practice. My denomination has also been a founding member and I have represented it on the Policy Council of the Religious Coalition for Abortion Rights which was organized, as expressed in its Statement of Purpose "To build public awareness of the principle that in a pluralistic society the state should not embody in law one particular religious or moral viewpoint on which widely differing views are held by substantial sections of the religious community."

4. My concern about this issue flows out of our concern for women, children and responsible parenthood and for securing and safeguarding the liberty of all women to decide whether or not to terminate a pregnancy in accordance with the teachings of their religions and the dictates of their conscience. I believe that the right to choose and have access to safe and legal abortion, just as to prenatal and childbirth care, is a right essential to my understanding of human liberation and fulfillment for women and all people in accordance with God's design.

5. I share the view expressed in the United Methodist Church's "Resolution on Responsible Parenthood" and in the testimony of Dean J. Philip Wogaman, expounding the origin and tenets of that teaching, that "each couple [and each woman] has the right and the duty prayerfully and responsibly to control conception according to their circumstances" and that "the path of mature Christian judgment may indicate the advisability of abortion" where "continuance of a pregnancy . . . endangers the life or health [including 'physical, mental and emotional health'] of the mother, or poses other serious problems concerning the life, health, or mental capability of the child to be." I view the permissibility, advisability and/

or necessity of abortion according to circumstances as a determination which must be absolutely and ultimately entrusted to the conscience of the individual before God. Because my belief is based on an understanding of the relationship between the individual and God, I feel that the intervention by government to foreclose or burden that choice interferes with and deprecates the practice and teaching of my religion.

6. I also believe that the battle waging in our nation today to restrict and eliminate this right to abortion is an attempt to enforce one particular religious belief on those who believe otherwise. This belief, diametrically opposed to my own, views developing human life as a human being and abortion *per se* as immoral, and even tantamount to murder. This belief is for some religions also rooted in the concept that sexual activity unintended for childbearing is sinful and that unwanted pregnancy is appropriate punishment. By contrast, my religion teaches that responsible and loving sexual relationships are a gift of God to be enjoyed independent of, as well as in relationship to childbearing.

7. The original Hyde Amendment and the continuing resolution challenged here which severely restrict the occasions for Medicaid reimbursement for abortion are founded on and impose on poor women, in slightly compromised form, the restrictive religious belief on abortion, advancing and attempting to enforce this religious view to the detriment of the United Methodist view.

8. As it affects poor women, the Hyde Amendment burdens the right freely to exercise one's religion with respect to abortion because it either forecloses or discourages the choice of abortion over childbearing. For women of The United Methodist faith, the Hyde Amendment impedes exercise of the right and duty to make a decision consistent with the principles of Responsible Parenthood. Restricting funding for abortion, while funding pregnancy and childbirth, has the effect of forcing and pressuring the indigent pregnant woman in the direction of bearing an unwanted child, whether because safe, legal abortion is completely or seemingly inaccessible to her, or

because the risk to her very life from self-abortion or obtaining an illegal abortion is too great to run. The pressure the Hyde Amendment exerts upon poor women to resign themselves to unwanted childbearing is fundamentally inconsistent with the teachings of responsible parenthood. The effect of this restriction is to make poor women "targets for exploitation by unskilled abortionists working in unsanitary and illegal facilities." This situation is intolerable to me in light of the ethical teachings of my religion. It is also intolerable to me that this pressure should be brought to bear on any woman who believes an abortion to be necessary whether for religious or nonreligious reasons.

9. I strenuously oppose the use of my tax funds thus to manipulate the conduct of poor women in accordance with a religious view alien to some and I oppose the added human and social cost as well as the expenditure of tax monies the federal abortion restrictions require to pay for the continuation of coerced, unwanted pregnancies, and for the treatment of medical complications from illegal or self-induced abortions and/or from the continuation of coerced, unwanted health- and life-threatening pregnancies, and for other additional expenses created by the restrictions.

10. The attached complaint raises the same questions of law and fact as contained in plaintiffs' amended complaint and as heard in the proceedings in this case.

/s/ Ellen Kirby
ELLEN KIRBY

Sworn to before me this 4th day of January, 1978.

/s/ Jewel J. Tillis
JEWEL J. TILLIS
Notary Public, State of New York
No. 31-4638663
Qualified in New York County
Commission Expires March 30, 1978

[SEAL]

RESOLUTION ON ABORTION RIGHTS
Of The Women's Division
Of The
Board of Global Ministries
United Methodist Church

As members of the Women's Division of the Board of Global Ministries, we are deeply disturbed over the increasingly bitter and divisive battle being waged to place an amendment in the U.S. Constitution to ban abortion.

We believe deeply that all should be free to express and practice their own moral judgment on the matter of abortion. We also believe that on this matter, where there is no ethical or theological consensus, and where widely differing views are held by substantial sections of the religious community, the Constitution should not be used to enforce one particular religious belief on those who believe otherwise.

In 1969 the Women's Division first took the step of calling for the removal of abortion from the criminal code, putting its regulation instead under standard codes of medical practice. In 1970 this position was adopted by the General Conference and in 1972 it was reaffirmed in the Social Principles of our denomination, which state that "in continuity with past Christian teachings, we recognize tragic conflicts of life which may justify abortion". This position is in accord with that of many other major Protestant denominations and Jewish faith communities.

When the Supreme Court decision of January 1973 made possible the legal option of abortion in all states, we hoped that all those concerned with this problem could turn their attention to seeking to remove conditions in our society which might create a need for abortion, such as faulty contraceptives, lack of education on responsible sexuality, lack of access to family-planning services, tragedies such as rape, incest and genetic defects.

Now we find, instead that vast amounts of energy, money and time are going to the attempt to use national legislation and even the Constitution to force continuation of pregnancies, no matter what the human or social

cost. Various kinds of legal and social pressures are being used to intimidate doctors and hospitals who are involved in abortion.

Amendments which prohibit or restrict abortion rights are being proposed for a number of health related bills. If such legislation is approved the most direct effect would be against the poor who cannot afford to travel to the places where safe legal abortions are available. These women then become targets for exploitation by unskilled abortionists working in unsanitary and illegal facilities.

We affirm our belief in freedom of conscience on this matter. We are concerned about those who have been bitterly attacked for seeking to deal openly with this issue in a spirit of compassion. Although we respect the right of other religious individuals and groups to disagree on the matter of abortion, we earnestly make the appeal that our differences be embued with a spirit of ecumenical relationships.

CONCLUSION

The struggle raging over abortion centers largely on religious and philosophical differences rather than on the types of social factors which normally fall within the purview of government. We, therefore, affirm once more our belief that where there is no religious or moral consensus in our society, the attempt to embody one particular moral viewpoint in the United States Constitution does serious injury to our cherished freedom of religious belief and conscience.

Adopted at Spring meeting, April, 1975.

UNITED METHODIST CHURCH

Excerpts from resolution on

RESPONSIBLE PARENTHOOD

. . . We affirm the principle of responsible parenthood. . . .

Each couple has the right and the duty prayerfully and responsibly to control conception according to their circumstances. . . .

When, through contraceptive or human failure, an unacceptable pregnancy occurs, we believe that a profound regard for unborn human life must be weighed alongside an equally profound regard for fully developed personhood, particularly when the physical, mental, and emotional health of the pregnant woman and her family show reason to be seriously threatened by the new life just forming. . . .

We believe that continuance of a pregnancy which endangers the life or health of the mother, or poses other serious problems concerning the life, health, or mental capability of the child to be, is not a moral necessity. In such case, we believe the path of mature Christian judgment may indicate the advisability of abortion. We support the legal right to abortion as established by the 1973 Supreme Court Decisions. We encourage women in counsel with husbands, doctors, and pastors to make their own responsible decisions concerning the personal or moral questions surrounding the issue of abortion.

We therefore encourage our churches and common society to:

7. Safeguard the legal option of abortion under standards of sound medical practice, and make abortions available to women without regard to economic status. . . .

Adopted by the 1976 General Conference, the United Methodist Church.

ATTACHMENT A

NUMBER OF REPORTED MEDICAID ABORTIONS, BY STATE AND JUSTIFICATION FOR ABORTION, FOR WHICH FEDERAL MATCHING FUNDS SHOULD BE AVAILABLE UNDER P.L. 95-205, OCTOBER 1, 1978-DECEMBER 31, 1978

State [1, 2]	Total Number of Abortions Reported	Justification for Abortion: Life of Woman Endangered	Justification for Abortion: Severe and Long Lasting Damage to Health of Woman	Justification for Abortion: Rape or Incest
TOTALS	780	645	86	25
Colorado	49	49	0	0
Connecticut	29	29	0	0
*Georgia	3	0	2	1
*Idaho	5	0	5	0
*Illinois	59	15	41	3
Iowa	4	3	0	1
*Kansas	3	3	0	0
*Maine	1	0	1	0
*Maryland	43	35	7	1
Massachusetts	24	[3]	[3]	[3]
*New Jersey	42	42	0	0
New Mexico	3	1	0	2
New York [4]	55	54	1	0
*Ohio	386	373	12	1
*Oklahoma	19	18	1	0
*Oregon	22	6	2	14
*Pennsylvania	21	9	12	0
*South Carolina	2	1	0	1
*Texas	2	2	0	0
*Vermont	3	0	2	1
*Virginia	4	4	0	0
Wisconsin	1	1	0	0

*Indicates those states from which written confirmation has been received.

[Attachment A continued on page 142]

[Attachment A continued]

[1] The following 30 States/areas reported that no [illegible] ing the criteria of P.L. 95-205 were financed during this period:

Alabama	Louisiana	North Dakota
Alaska	Michigan	Puerto Rico
Arkansas	Minnesota	Rhode Island
California	Mississippi	South Dakota
Delaware	Missouri	Tennessee
District of Columbia	Montana	Utah
Guam	Nebraska	Virgin Islands
Hawaii	Nevada	Washington
Indiana	New Hampshire	West Virginia
Kentucky	North Carolina	Wyoming

Arizona does not have a Medicaid program.

[2] Data are not available at this time for the State of Florida due to data processing problems.

[3] Justifications for abortions not reported by Massachusetts.

[4] New York data are partial. Several counties have not reported to the State.

TOTAL NUMBER OF REPORTED MEDICAID ABORTIONS BY STATE AND REPORTING PERIODS DURING 1978

	Total	Feb. 14, 1978-June 30, 1978	July 1, 1978-Sept. 30, 1978	Oct. 1, 1978-Dec. 31, 1978
Total	2,421 [1, 2, 3]	810	831 [2]	780 [1]
Alaska	94	94	0	0
Arkansas	9	6	3	0
Colorado	170	81	40	49
Connecticut	106	47	30	29
Florida	176 [1, 2]	66	110 [2]	[1]
Georgia	12	3	6	3
Idaho	20	7	8	5
Illinois	264	124	81	59
Indiana	4	2	2	0
Iowa	4	0	0	4
Kansas	3	0	0	3
Kentucky	3	3	0	0
Maine	3	1	1	1
Maryland	144	42	59	43
Massachusetts	24	0	0	24
Mississippi	12	12	0	0
New Hampshire	1	0	1	0
New Jersey	98	34	22	42
New Mexico	5	2	0	3
New York	149 [3]	51	43	55 [3]
North Carolina	9	8	1	0

TOTAL NUMBER OF REPORTED MEDICAID ABORTIONS BY STATE AND REPORTING PERIODS DURING 1978 (Continued)

	Total	Feb. 14, 1978-June 30, 1978	July 1, 1978-Sept. 30, 1978	Oct. 1, 1978-Dec. 31, 1978
North Dakota	1	1	0	0
Ohio	811	98	327	386
Oklahoma	38	10	9	19
Oregon	31	7	2	22
Pennsylvania	108	34	53	21
Rhode Island	1	0	1	0
South Carolina	21	12	7	2
South Dakota	1	1	0	0
Tennessee	19	19	0	0
Texas	14	7	5	2
Utah	2	0	2	0
Vermont	6	0	3	3
Virginia	9	2	3	4
West Virginia	3	3	0	0
Wisconsin	45	33	11	1
Wyoming	1	0	1	0

[1] Data not reported for quarter ending in December for Florida.

[2] Revised report to be submitted for quarter ending in September for Florida after HEW review.

[3] Data for quarter ending in December are incomplete for New York State. Some counties have not reported.

TOTAL NUMBER OF REPORTED MEDICAID ABORTIONS, BY JUSTIFICATION FOR ABORTION, FEBRUARY 14, 1978-DECEMBER 3, 1978

Justification for Abortion	Total	Feb. 14, 1978-June 30, 1978	July 1, 1978-Sept. 30, 1978	Oct. 1, 1978-Dec. 3, 1978
Total Number of Reported Abortions	2,421 [1]	810 [1]	831	780 [1]
Life of Woman Endangered	1,857	546	666	645
Severe and Long Lasting Damage to Health of Woman	385	146	153	86
Rape or Incest	61	24	12	25

[1] Figures will not add to totals because Alaska did not report the reasons for 94 abortions in the February 14-June 30 period, and Massachusetts did not report the reasons for 24 abortions in the October-December period.

[Dr. Jane E. Hodgson:]

[43] Q Is there a standard medical definition of the phrase, when the life of the mother would be endangered if the fetus were carried to term?

A There is a very ambiguous statement. It actually means very little to me.

If you take it in the strip sense of the word, there would be no such cases essentially because in this day of modern medicine it is possible to get almost any woman through a pregnancy as far as her actual physical life is concerned.

[44] However, if you are simply talking about endangering her life then it is a matter of degree and what are you talking about—her physical life, mental, emotional, social life? There are any degrees of interpretation that are possible.

* * * *

[63] Q Now, going from the specific example to the general, and please feel free to refer to any particular condition that you feel makes your point and whether it is on this list, exhibit three, or anything else you want to tell us about, but isn't it a correct statement that with a woman who has a serious physical problem, be it her heart or respiratory system or renal system or muscular system or nervous system, isn't it true that you have to take such a patient during the course of a pregnancy and closely monitor that patient so that—

A Right.

Q (Continuing)—so that you can establish with a reasonable degree of medical certainty, not absolute certainty, not a wild guess, but with a reasonable degree of medical certainty whether the pregnancy is going to endanger the patient's life?

A Yes, with a reasonable degree of certainty.

* * * *

[99] THE WITNESS: In my medical judgment every one that is not wanted by the patient, I feel there is a medical indication to abort a pregnancy where it is [100] not wanted.

I in good faith, I would recommend on a medical basis, you understand, that, and it would be one hundred percent.

Q You are referring to medical necessity abortions that you would say are medically necessary?

A I think they are all medically necessary, not just one with hypertension, but the woman coming in applying, and most of them are necessary.

Occasionally we will advise these women to carry their pregnancy to term, but most of these are medically necessary because I am considering the woman's physical mental emotional and social and welfare and family and enviornment and all that.

* * * *

[107] Q Dr. Hodgson, I'm going to ask you only two questions:

The first one goes back to a hypothetical situation painted by the United States Attorney, and I am sure you don't remember it so I am going to try and repaint it:

He said supposing you do assume that the Hyde Amendment standard, the Hyde Amendment said or meant when the physical life of the mother is endangered, and he said let's assume that is the case, and then he said:

Supposing a woman comes in with a history of present and past cardiac failure.

Now let me ask you, given that situation just as clearly as he painted it, as clearly as that could be understood, is it possible that your determination as to whether or not a pregnancy would endanger this woman's physical life would change during the life of her pregnancy?

A Very definitely.

* * * *

[Dr. Johan Eliot:]

[416] Q Now, how many—again, if you have to give us a rough estimate, based on your experience, based on your knowledge, what percentage of abortions that would —say up to a few hours ago—would have been permissible under the Medicaid program, reimbursable under the

Medicaid program? What percentage will be reimbursable under the Hyde Amendment, as you now understand it to be implemented?

A As I now understand it, depending on where the estimate is being done, if it's the heart of the trade, it might be as high as two or three per cent. If it's in Ann Arbor, it would be less than one per cent.

* * * *

[438] Q And what I am saying is medically necessary abortion, you're quite correct, medically necessary abortion, does that mean that there was not a medically acceptable alternative to abortion?

A Not necessarily, no. Because as you have gathered from our previous conversation, I considered that a great majority of pregnancies can either be carried to term or not, depending on the desire of the woman in question. Only a very small, small proportion, less than one per cent, do doctors feel urgent with the need to urge upon the woman that she have it terminated.

* * * *

[461] Q So, would it be fair to say that if a woman does not want a child, for whatever reason, that that could enter into a determination: It might be medically necessary for her to have an abortion?

A This is certainly one of the factors that I considered. You know, if you make a list of things that figure into medical advisabilities—need, necessity; whatever the term—this is one of them.

* * * *

[Dr. Edward O. Rothchild:]

[683] Q Let's talk a minute about the words "medically necessary."

How would you define this phrase?

A My definition would be that Medical necessity would be something necessary to preserve the health of the patient.

[684] Q When you—and I use this phrase—are we using a generally accepted medical standard?

A Yes.

Q And within the context of determining whether a medical procedure is necessary, medically necessary for a given patient, what criteria would a doctor consider?

A I would say that a general factor such as the physical condition of the patient, the emotional status, the psychological status, familial status, the age of the patient—

* * * *

[832] Q Can you tell me any other field, any other medical, any other medical field, in which the hospital corporation renders elective services in such masses and substantial numbers?

A The whole field of surgery is, I would say—I [833] just tried to find this out two months ago. It ranges from 30 to 70% of surgical procedures are elective in our hospitals.

Q Can you tell us what other elective procedures there are?

A Most medical admissions are not elective. Most pediatric admissions for surgical are not electives.

Q Can you give me any examples at all, and I am talking about significant numbers, of elective procedures outside of abortion?

A Sure, hernias.

Q Is that considered elective or medically necessary.

A It certainly is considered—no, you want to—

Q Yes, I want to.

A —deal with a different generic use of the term. That is not elective in the sense of the definition of family convenience, whatever the words I have used before.

Q Yes, not medically necessary.

A Family planning, social or emotional convenience, no. Do I know if there are other elective procedures?

Q Elective in the sense of non-medically necessary, non-medically indicated procedures provided by the [834] hospital corporation in significant numbers?

THE COURT: The kind of things where they say: while we are in there, we might as well take out or thus and so.

MR. WASHBURN: Whether or not it is medically necessary.

THE COURT: If you have ever heard that expression.

MR. WASHBURN: And I would be indicating there that it would be something not medically indicated or necessary; any other, anything else you can think of?

A I would have to give that some thought. The fact that I can't come up with something right away doesn't mean that there aren't some things.

Q How about surgical procedures, any other surgical procedures? You have testified that abortion was a surgical procedure. Any other surgical procedures that are not medically necessary that are provided in such large numbers, hundreds of thousands? I guess you did treat abortion differently, didn't you, Doctor?

A Yes, but let me answer the first question.

Q I'm sorry, go ahead.

It was your silence that I thought indicated an answer.

[835] A My silence was that I was thinking. I tend to think by being quiet. I am confused a little bit as to the question, do we perform elective procedures?

Q Non-medically indicated procedures in large numbers in any other area.

A I am trying—I have to go down a whole list of services that we provide, and I would say, yes, we provide such things as training programs that are not medically indicated. We provide such things as community relations/services that are not medically indicated. I probably, if I gave it some thought, could come up with a lot of things that we provide that are not medically indicated.

Q Are those funded by Medicaid?

A I can't answer that question. I would say that they—as a matter of fact, they are. They are in the base reimbursement rate, yes, considered part of hospital operations.

Q Didn't you testify that the Medicaid standard was medical necessity?

A Oh, I said the Medicaid for procedures that are medical or surgical procedures are. Medicaid does fund non-medically indicated things. They do it all the time. The fund education. They fund training. They fund a whole bunch of things.

[836] Q Putting those things to one side and sticking for the moment to those things you testified to, can you think of any other medical procedure not medically necessary which was provided in large numbers by your corporation, other than abortion?

A I would have to say, no, but I would have to say no, conditional on me thinking about it a little more.

Q If the answer were no, would you have to concede that you treated abortion differently than other surgical procedures?

A Absolutely.

* * * *

[Dr. Christopher Tietze:]

[944] Q If the doctor were required to certify to a reasonable medical certainty that the pregnant woman would die during the course and as a result of her pregnancy, approximately what percentage of abortions now performed do you think would be done under Medicaid, if you can so approximate?

A I think—obviously I cannot put a precise estimate on such a figure, but I can try to take you to my thinking on the issue.

The formulation that you have proposed is one that is stricter than the preserved life formulation, stricter than the old law. Let's assume that it's the same.

[945] We have these 5,000 or 6,000 abortions in normal years, '63 and in '66 under the old laws. We know that a goodly number of the abortions at that time were obtained by a number of patients who weren't poor and we are discussing here the status of poor patients. In the New York experience, in 1962, the earlier year, about 90 percent of the abortions were obtained by private patients and then in the later expereince, '65-'67 which is something like 75 percent were obtained by private patients, and in Dr. Hall's paper were something like 85 percent were obtained by private patients. Let's take that figure being midway between 90 and 75. So, nonprivate or poor patients would represent about 15 percent, or something less than 1000 abortions per year compared with somewhere between 250,000 and 300,000 abortions

performed under Medicaid and related programs in 1966, so it would be on the order of one in 300.

In other words, the reduction would be about 99.7 percent, roughly one in 300.

* * * *

[946] A Yes, I would consider it so because I accept the definition of the World Health Organization which defines health as a state of physical, mental and social well-being and not merely the absence of a disease and disability.

If one accepts this standard, I think the Supreme Court's illustration is a very good illustration of what is medically necessary.

* * * *

[Dr. Seymour Romney:]

[1056] Q How significant is the patient's attitude towards the pregnancy in determining the medical necessity for an abortion?

A I personally think it's a critically important issue. It's very difficult to take a woman who's not well motivated and who does not understand what is entailed in assuming the physical responsibilities of pregnancy and expecting her to carry out medically determined situations unless she's well motivated and prepared to cooperate, participate, be seen for periodically ante-natal visits and be followed carefully, closely throughout the pregnancy.

Q Is a person's attitude toward treatment or toward a particular disability usually a significant factor in providing appropriate medical care apart from pregnancy?

A I'm not sure I understand that.

Q You stated that a pregnant patient's attitude towards pregnancy is a significant factor in determining whether or not an abortion would be medically necessary?

A Right.

Q Is a patient's attitude toward treatment for other conditions also a significant factor? Is this general practice that the attitudinal factor is important in determining whether a form of treatment is medically necessary?

A I think it wouldn't. The answer to that is, [1057] yes, it would not.

* * * *

[1195] Q You said very early this morning that the Hyde amendment language was a crisis intervention standard. Would it be fairer to state that the medically necessary standard is a preventive medicine standard contrasted with the phrase "crisis intervention"?

A I think that's closer to reality, yes.

* * * *

[1209] If you want to translate what the genesis might be to a patient who is pregnant and who says she is engaged in an unwanted pregnancy and may be motivated to do something about that pregnancy which will get her into serious trouble—

Q I am taking that out of the picture. That is something that I will get to where they are threatening to go to a non-professional abortionist. I'm excluding that from this question. I will get to that.

I am just saying, are there recommended treatments for obesity other than abortion.

A Dieting is probably the best.

* * * *

[1210] Q Is the same true as to malnutrition, is it a recognized treatment to have abortion for malnutrition?

A No, you provide adequate nutrition.

Q And is abortion a recognized treatment for anemia?

A Again we are in a situation now where if you translate this into population it is simpler for me to say that you get the necessary protein to cure.

* * * *

[1251] Q In general, medical practice, let's say in gynecology and obstetrics, is it a general principal for medical intervention that where a small risk to life exists and a safer form of treatment is desired by the individual also exists that would avert that small risk to life that intervention is medically necessary?

A I think—

Q As a general rule?

A I think we have discussed—we are discussing the possibility—we are discussing a theme which has come up here on several occasions today. Preventive medicine

is much better than crisis medicine. If you can avoid getting into the crisis, if you can avoid the serious complications, it is highly desirable that that avenue be explored.

* * * *

[Dr. Bernard J. Pisani:]

[2176] Q In your experience at this time are life-threatening indications in pregnancies well known to Board-certified obstetricians and gynecologists in the United States?

A Yes, I feel that certified obstetricians and those who have been well trained are in a position to recognize life-threatening conditions in a woman during pregnancy.

* * * *

[2178] Q In your experience have life-endangering indications in pregnancies been a subject of serious study throughout the term of your practice by obstetricians and gynecologists throughout the United States?

A Yes, they have been a very primary concern for all obstetricians.

Q Are they fully familiar with the life-endangering—life-threatening conditions in pregnancies, [2179] that is based on the studies and their continuing efforts to reduce the maternal mortality rates?

A I would think based on their studies and their knowledge and their experience, these are the factors that I think most directly led to the improvement of the majority of women in maternity.

* * * *

Q Dr. Pisani, I'm now showing you the language of the Hyde Amendment.

I would ask you to read aloud these four lines with, "none," and ending with, "term."

A I read from page 5:

"None of the funds contained in this act shall be used to perform abortions, except where the life of the mother would be endangered if the fetus were carried to term."

That is the end of the sentence.

Q Dr. Pisani, does the language of the Hyde Amendment, especially with the use of the words, "Life [2180] endangering," refer to a matter well understood by obstetricians and gynecologists throughout the United States?

A I would be my opinion that it does refer to matters that are hazardous to the life of the mother that obstetricians understand and should be prepared to meet.

Q And have these matters been the subject of continuing study and consultation by the medical societies of the various states, including New York?

A Yes, they have been by the specialty societies that are directly concerned with obstetrics.

Q And Doctor, if you were asked to certify in good faith with a reasonable degree of medical certainty whether in a particular case the life of a mother would be endangered if the fetus were carried to term, would you be able to do so in an individual case one way or the other?

A Yes, I would be able to make a determination about the state of that mother.

Q So that if there were no life-endangering indications, you would be able to either refuse to certify or certify as to that fact, and if there were indeed a life-endangering indication present in the individual patient, you would be able to certify to that?

A I would consider it a part of my competency to [2181] be aware as to that.

Q And has that been true throughout your practice as an obstetrician and gynecologist?

A My continuing study and observation and experience I feel has contributed to my fund of information and knowledge.

* * * *

[Professor Aaron M. Schreiber:]

[2240] Q Is there a prevailing viewpoint in traditional Jewish law on the subject of abortion?

A The subject of abortion is a very complex one in Jewish law and there are many opinions—have been expressed by Jewish rabbis and I am referring now to

both those who follow the Jewish tradition and since the arise of the Reform Movement I am referring to Orthodox rabbis, who have continued to follow the Jewish tradition.

There have been many viewpoints running the gamut. However, in summarizing them, I would disagree very strongly with Rabbi Feldman's presentation of what the viewpoint of traditional Jewish law is with regard to abortions. In that I feel that Rabbi Feldman has not properly stated or has understated the views of those authorities who maintain that abortions are prohibited or that abortions indeed constitute a homicide.

For example, I read carefully through Rabbi Feldman's testimony and I saw no mention made of the viewpoint of current contemporary rabbis, who are regarded as legal authorities. It is the nearly unanimous opinion of American Orthodox religious and legal scholars that abortions are prohibited, except in a case where the mother's life is clearly threatened, and that such abortions are homicide.

[2241] Now, for example, there was a statement made by Rabbi Moisha Feinstein, who is I believe the present president of the Union of Orthodox Rabbis of the United States and Canada, but, in addition, is regarded by many Orthodox Jews and perhaps by most, as the Dean of American Rabbis in the realm of decision making and Jewish law.

And he has repeatedly referred to abortion as homicide or as a murder. He's used the Hebrew term.

Similarly, the Rabbinical Council of America, which is a very large organization of Orthodox rabbis, has taken a strong stand against abortions, against permissive abortions or abortions where the mother's life is not threatened. The same true is true of a number of other Orthodox Jewish rabbinical organizations.

Indeed, I think it would be extremely difficult to find any acknowledged Orthodox Jewish authority in the United States who would say that abortions are permitted unless the mother's life is threatened. The same applies outside the United States.

For example, Rabbi Yosef, who is one of the two chief rabbis in Israel has taken a strong stand against the Israeli statute that had been proposed and was since adopted which permits abortions in a number of cases. The same was true of the other chief rabbi, Rabbi Goran. [2242] All of the deans of the Jewish Orthodox theological schools, which concentrate on Jewish law in Israel, came out very strongly against that proposed Israeli abortion statute and participated in mass demonstrations against it. And branded it as murder, homicide.

I did not find adequate reference to these views in Rabbi Feldman's testimony. There is no reference at all to the American rabbis, who are familiar with the context of current American society. I also found that on—I thought he underplayed the views of rabbis who are not living but have lived in the past, of those who maintained that abortions are prohibited.

There are many of the most eminent rabbis and legal scholars, of the first order, who took a very firm position against abortions and these range from the authors of the work called the Tosafot, including Rabbi Elijah Misrachi, Ezekiel Lantau, one of the foremost decision makers in the 1800's in Europe, such as Weinberg lived in Switzerland during the latter part of his life, Rabbi Unterman, who was one of the former chief rabbis of the State of Israel, Rabbi Chaim Solovitchik—would be an acceptable—Rabbi Mayer Don Pletski, Rabbi Chaim Ozer Grodzenski, and numerous other authorities who are considered among the very first rank of Jewish decision makers and authorities [2243] on Jewish law who came out very strongly against abortions.

I found this underplayed in his testimony. One other point that I think should be made in this context, namely, that in considering the viewpoint of Jewish law, one should realize that until fairly recently, works on Jewish law were not always readily available. So that when a Jewish legal authority or rabbi had a question of abortion before him, he might have access to some works but often not have access to them. In fact, may have heard of them but not been available on—and in some cases

not even heard of them because they were published in other countries.

It is only the current authorities who are the ones who have access to all of the works on abortion and legal opinions written in all past centuries. And these have existed, these current Orthodox rabbis have examined all of these opinions and yet, overwhelmingly their position is that abortions are prohibited in Jewish law, except in the case where the mother's life is threatened. However —this is the unanimous opinion of rabbis today.

I also think that the impression that Rabbi Feldman created in his testimony, at least in my mind, was that what he did is act as a sort of an accountant or bookkeeper in trying to count up various legal opinions and then to add them up and conclude in his opinion that those who [2244] permitted abortions, even where the mother's life was not threatened, with normal—were more numerous than those that prohibited it.

I think it's fallacious to do that. One cannot simply count numerically. One must take into account the standing and status of the decision makers, their degree to which they're accorded recognition, their access to other works, as well as the context under which they rendered their decisions and the society in which they lived and the factors that they had to consider in rendering their decisions. A mechanical counting of authorities is certainly not the way to do it.

In any case, I would disagree with this accounting. I don't think it can be clearly stated that those who permit abortions are on the majority. In any case, I think it's wrong simply to do it in that way.

Q Now, before you read the testimony of Rabbi Feldman, had you ever heard any pronouncement by an Orthodox, Conservative or Reformed Rabbinical organization which stated in some words that abortion would be the religious or obligation under certain circumstances of a Jewish woman, where her life was not threatened?

A No, I have not heard of such pronouncements, neither by Orthodox rabbis, nor by Conservative or even [2245] Reformed.

[2251] Q Is there any passage in Scripture which he would want to draw our attention to?

A Yes. There are a number of passages I'd want to draw your attention to but I would like to just preced that with a description that I may overlook in the course of going into the passages themselves; namely, the issue raised before as to whether abortions were mandatory or not under Jewish religious tradition and based upon the Scriptural passages and portions of the Talmud which I will get to very shortly, it is very clear to me that Rabbi Feldman is in error—if this is what he means to state in his testimony—that abortions are mandated by Jewish religious law and tradition even where the mother's life is not threatened.

If that is what he means to say, it is clearly [2252] erroneous because even those Jewish authorities who have permitted abortions have done so only with the greatest reluctance and after a huge amount of soul searching and attempting to find some rational, some principle to permit abortions. But they have only done so, permitted abortions reluctantly. They had not mandated it and said it is required with the sole exception where the mother's life is threatened. But otherwise, it has simply been a very, very reluctant permission. Even when given, normally conditioned and restricted by numerous restrictions rather than a simple case of a mandate.

Number two, involved with this—I think it is important to realize that even those authorities who have permitted abortions in given cases or stated a view that it may be permitted, nevertheless, there is still a very strong feeling that from the point of view of morality that abortions are immoral. That is, one basically may clarify it as legal factors and moral factors—though that is a gross over-dimplification—but those who have permitted it feel that abortions are moral except that in certain circumstances they may be permitted in their viewpoint.

* * * *

[2259] Q Was there another point in Rabbi Feldman's testimony where he said that the decision of whether or not to abort was up to the woman under Jewish law?

A Yes.

Rabbi Feldman stated that the decision on abortion in Jewish law is up to the woman. I very strenuously disagree with that. I believe that that is importing into Jewish law some non-Jewish notions, particularly the notion of the Row case cited by the United States Supreme Court.

In Jewish law a person's body is not regarded as belonging to him or to her but to God.

Therefore, a person may not for example decide that that person wishes to commit suicide and say: It's my body. I will do with it as I wish.

In the same way, where the issue is abortion, neither the life of the fetus or the body of the mother is regarded [2260] as belonging to her nor that the decision is simply in her discretion. It is simply not so.

This principle that a person's body does not belong to that person is widely accepted. In fact, it was even carried very far.

* * * *

[Dr. Fred E. Mecklenburg:]

[2312] Q Dr. Mecklenburg, I would like to show you a copy of the so-called Hyde Amendment. These four lines, I would like you to read it aloud.

A "None of the funds contained in this Act shall be used to perform abortions, except where the life of the mother would be endangered if the fetus were carried to term."

Q Dr. Mecklenburg, would you be able to certify in good faith with a reasonable degree of medical certainty with respect to whether or not a woman's life would be endangered if the fetus were carried to term in a given case?

A Yes, I would.

* * * *

EXCERPTS FROM MEDICAL TRANSCRIPT

[Dr. Johan Eliot:]

[389] Q Now, if you are asked what you think—suppose I ask you what you think is meant by the term abortions which are medically necessary because the life of the woman would be endangered by carrying the fetus to term, carrying the pregnancy to term. How would you understand that? What do you think that means?

A My understanding of those—of that phraseology, putting the emphasis on endangering the life of the mother if the pregnancy is carried to term, is that that encompasses a very small group of women indeed. Because with the skills of modern obstetrics and internal medicine, just about any pregnancy can be carried through with the lifesaving and life preserving and treatment procedures that are now available.

There are exceptions, and I can think of a few in my past experience where a termination was truly necessary to save the life of a woman. But they are really quite rare.

* * * *

[390] Q Could you give me some examples of an abortion which you would regard as medically necessary?

A Yes.

If I may use the examples that I have abstracted. I have abstracted five cases here of women who would specifically fall into this second category, women for whom I felt an abortion to be medically necessary, but in whom there was really no doubt that the pregnancy could be carried to term without endangering the life of the woman.

The first I pulled from our files was a 19 year old woman who was threatened with a knife and was raped by an unidentified man in one of Ann Arbor's less traveled residential areas.

Because there had been a series of rapes recently, she was terrified and afraid of being hunted out and attacked

if she attempted to report the rape. So she waited, and in two months pregnancy symptoms forced her to seek help.

Because she was currently jobless and without income [391] she was helped by our clinic to apply for Medicaid.

The abortion was completed without complications. She was given substantial supplemental counseling both before and after the procedure to assist her with emotional adjustment with this really traumatic experience.

Q Now, you regarded that abortion as medically necessary?

A Yes, indeed. This would have greatly disturbed her personal life and her own personal mental health. This pregnancy was utterly repugnant to her and she was in a definitely emotionally disturbed condition. She was greatly relieved by the termination.

Q However, you did not believe it would have endangered her life to continue that pregnancy?

A No, I do not.

Q Now, let's go on to your second case, Doctor.

A The second case that I cited was that of a 33 year old mother of three children who was furloughed from our State Mental Hospital for weekends at home with her family.

After nine months of treatment in the hospital for a sickly depressive state, for which she had been under treatment for several years, although she had been prepared for her home furlough by the fitting of a diaphragm, and [392] used it conscientiously insofar as she knew, she became pregnant.

Apparently at the time of her second visit at home, because the family had low income and the husband was only intermittently employed, the family was already receiving welfare assistance and was eligible for Medicaid.

The patient was much disturbed at the discovery of her pregnancy. And her physicians at the State hospital judged it definitely inadvisable for her mental health to try to carry this pregnancy to term.

So with Medicaid support "an" uneventful abortion was carried out again with careful counseling.

She recovered quickly and well. And the course of her general recovery of her mental illness seemed to be progressing satisfactorily when we saw her for her regular check-up two months later.

Q And you regarded that abortion as medically necessary?

A Yes, indeed.

Q But you did not think it was necessary—well, let's put it this way. You did not think it was necessary because her life would have been endangered by carrying the pregnancy to term?

A No.

[393] Q Now let's go on to your third case, Doctor.

A This is the case of a 30 year old woman who found herself greatly perturbed by the care of two retarded children.

She came to us urgently requesting an abortion because she found herself unexpectedly pregnant despite the use of an intrauterine device.

She feared that this pregnancy might result in another retarded child, and that even if the child were normal she feared that the burdens of care for the two older retarded children would deprive her of the time and energy to give the new child the physical care and loving attention needed for normal birth.

Her pregnancy was terminated uneventfully with Medicaid's financial assistance. And she was provided with information and referral for a tubal ligation at her request.

Q Now, you regarded this abortion as medically necessary, Doctor?

A Yes, indeed.

Q Not in order to—not because it would have endangered the life of the woman to carry it to term?

A No. This was for her own and for her family's mental and physical health. But in no way was her life [394] endangered by the pregnancy.

Q Recently, Doctor, there has been some new information developed with respect to a risk of a IUD and a woman who may accidentally become pregnant with the IUD in place. Are you familiar with that research?

A Yes.

Q Let me ask you this: Do you feel that if a woman became accidentally pregnant with an IUD in place, that would be an indication for an abortion?

A This is where the differing emphasis and opinions of different physicians have to be brought to bear.

I am aware of the dangers and I have seen two such patients myself. But they constitute among all of the women who become pregnant with an intrauterine device in place, they constitute a very small percentage. And, therefore, while I would—we have a definite policy and I would follow that policy of counseling the woman to have the intrauterine device removed, and if it could not be removed without terminating the pregnancy, to terminate the pregnancy. That would be my counsel. But I would have to classify such a case on a statistical basis as preserving her health rather than an imminent threat of danger to her life if she continued the pregnancy.

[395] Since the overwhelming majority of women with an intrauterine device in place do carry the pregnancy to term without difficulty.

Q Does that mean, Doctor, that you might to have to counsel these women differently, depending on whether she were Medicaid eligible or whether she was a woman with private means?

A Yes, it would be—I would not be able to offer her the option of the advised abortion under these circumstances, speaking perfectly honestly.

Now, there are others who would interpret this differently, and it poses a great conundrum because the Food and Drug Administration requires of me that I give this counsel for the health and safety of the woman. Yet I am aware of the statistics, knowing that most of the women would come through the pregnancy safely, even if the intrauterine device has to be left in place because it can't be reached.

Q All right.

Let's go on to your fourth case, Doctor Eliot.

Do you want to tell us something about that?

A This was a case of a young woman, 16 years old who came to our clinic in great distress with the quiet knowledge and permission and support of her mother; but

[396] without the knowledge of her father and her foster brother.

She requested an early abortion with deep and bitter regret as the pregnancy was the result of a momentary lapse of self-control in her relation to her foster brother, who was not a blood relation and with whom she had fallen deeply in love.

She recognized that there was no possibility at all of carrying through with a marriage in this situation, and that if the pregnancy were known to her father and foster bother very severe emotional reactions would ensue, which were likely to split the family asunder with great mental anguish for all.

The family was not well off and was registered already for Medicaid assistance, so that it was possible to terminate this pregnancy in a confidential manner with Medicaid financing.

The mental health of this young woman, both present and future, and the integrity of this family were preserved.

Q Now, Doctor, you regard that abortion as medically necessary?

A Very necessary.

[397] Q But not because it would have endangered the woman's life to carry the pregnancy to term?

A No. This was a supremely healthy young woman.

Q All right. Let's go on to your next case, Doctor.

A This was the case of a 14-year-old deaf young woman with juvenile diabetes, who was brought by her mother for termination of a pregnancy that resulted from the transient affair with a young man who took advantage of this socially handicapped young woman.

And I say parenthetically that young deaf women are indeed socially handicapped and quite characteristically subject to sexual abuse on this account.

While the diabetes was under adequate control and a pregnancy could quite possibly have been successfully managed with good and expensive obstetrical care, there was clearly increased risk to this young woman. Statistically her age and her diabetes were likely to yield a

higher rate of complications in the pregnancy, especially for the infant involved.

It, nevertheless, appeared that her infant could have been delivered with very good care.

There would in addition have been [398] interruption of her schooling and impairment of her emotional adjustment, as she was greatly distressed by the reality of her situation, and very much wanted the abortion.

It was carried out with Medicaid assistance, since her mother was divorced and already receiving Welfare assistance.

Q Now, you regarded that abortion as medically necessary?

A Quite so.

Q But not because it would have endangered the young woman's life to carry it to term?

A Not because I could have said with any element of certainty at all that it would have endangered her life.

Q Do you often have patients with diabetes, Doctor?

A Occasionally.

Q And do you feel that that is usually medically necessary to perform an abortion in that situation?

A This depends a great deal on the individual case, and obviously on the desires of the woman involved.

[399] Q And—

A I'm sorry.

Q Go ahead.

A The severity of the diabetes is quite important. Young people who have diabetes all have severe diabetes. So that the degree of risk was greater for this woman than it would be for other women who were older and whose diabetes was of less severe degree.

* * * *

[451] A I have seen it. I have lived through with a niece, this traditional pattern of following through in the krittenden home. I can't remember the spelling.

THE COURT: Krittenden, I think it is.

THE WITNESS: Yes, I think it is, yes.

A (Continuing)—Krittenden home which used to be in the sense an alternative to abortion before abortion was available.

But there was no question one half of my brother's family knowing, and the other half not. They knew. They agreed and they withdrew her from where she was and sent her to a distant city, namely mine.

I saw her weekly through the long and tedious pregnancy, saw her through her bitter tears when she gave up that child.

Q To adoption?

A To adoption.

[452] And I have seen her through her ill adjustment to that particular situation ever since.

* * * *

[Dr. Donald Sloan:]

[1629] Q Are you associated with a clinic that's concerned with the psychosomatics of pregnancy?

A My function is also as part of the employment at the medical school is that I am Director of Psychosomatics in that department.

Q How—

A I should add another hospital, by the way, which I left out, which is part of the New York Medical College, Metropolitan Hospital of New York, a city affiliate of the Flower Fifth Avenue.

Q Is that where the psychosomatics clinic is located?

A Yes.

Q How long have you had the position of director of that clinic?

A About 10 years, almost. Since 1970, '69-'70.

Q Would you tell us about your education, beginning with medical school?

A Medical school was down the street, Brooklyn Downstate, and from there, State University of New York. From there, for internship at Albert Einstein, and a residency program at the Temple University Health Schience and Center in Philadelphia. I was—post-graduate training and clinic [1630] seminar courses in psychosomatics, and I've done workshop seminar training for my specialty in psychosomatics and sex therapy, reproductive biology institute. Doctor's degree in St. Louis.

* * * *

[1632] Q You said that that's where you had experience in your present specialty which is psychosomatics. Would you describe some of the psychosomatic conditions that you observed among the young girls at the Florence Crittendon Home?

A These young women were of varying age; as a matter of fact, from all gradations, from late teens to upwards of 20s and 30s. We had a pretty good cross-section, although most were younger women, younger 20s, teenagers, late teens, as I said. We were obviously going into a situation that was apparent to those who worked there of young women who, of course, were automatically troubled, coming from homes from around the country, literally, and some, of course, came without consent or the knowledge originally of their parents.

We anticipated and it was born out by our interviewing these young women, we're going to be dealing with a certain situation which lead well to an emphasis on the anxieties and proportion of many of the psychological problems of pregnancy.

[1633] Q Would you describe many of the women in the Florence Crittendon Homes as bearing unwanted pregnancies?

A That's the way you would have to label it, if you put a label on people like that, surely.

Q Did you observe psychosomatic complications of pregnancies?

A Oh, yes.

* * * *

[1634] Q As you mention these, would you give a brief description of what they are?

A Hyperemesis is excessive vomiting and the nausea of pregnancy which becomes a casual symptom in many young women—many women, not these people in particular. However, it becomes classified as hyperemesis when it affects bodily function. We were obviously responsible for giving our patients well-being, so we treated even the most casual of symptoms. Hyperemesassis becomes important when we feel, number one, it might have a deleterious effect on the pregancy.

Number two, a deleterious effect on the health of the pregnant women from the standpoint of nutrition, standpoint of intake, from the standpoint of personal attitude and care about her pregnancy which could lead to another number of side effects which would become untoward.

Q Is hyperemesis something that can continue throughout pregnancies?

A It can, and when it becomes severe enough, does. In cases of more severity, indeed it does do that, becomes a problem later on. I say it's more common earlier in pregnancy only because it's more known and, let's say, more [1635] superficial, but nethertheless it can become quite severe.

Other psychosomatic, so-called psychosomatic conditions of pregnancy revolved around a thing called ptyalism. Ptyalism is a condition of—which is marked by the symptom of excessive salivation. That's the symptom of the pregnant woman and we attribute it through vast amount of research—now attributed to a strictly psychosomatic condition. There's nothing organic. Women have experienced excessive expectoration in addition to the—due to what is manifested by some anxieties of the pregnancy.

Another one, by the way, along that same line concerns a certain type of anemia, caused by the certain psychosomatic condition of starch intake. Literally, I don't mean foodstuffs, I mean laundry starch intake. The Argo starch syndrome which has been collequially called because of the popular brand Argo, has been associated with these young women and others in similar conditions in which they resort to almost like an addict to an intake of this laundry starch, which is taken and chewed like chewing gum, and if you've ever tried it, you can't imagine how you would want to do it. It becomes quite pleasant in intake, becomes addictive.

What it does, and where it causes a threatened situation to their health is that it completely misconstrues their nutrition and metablism of foodstuffs and severe [1636] anemia is the result. It can be a very serious condition. I've seen some women with this starch situation which they chew on Argo starch with anemia such that their blood levels would be one half of normal, severe anemia, remarkable.

Q Doctor, is that a condition or phenomenon that's generally associated with poverty, or is that one which is enhanced by anxiety?

A It has been described in the poverty areas and has been attributed, I think, perhaps unfairly to a need for foodstuffs, nutrition, but when studied more, it's now more associated, the availability—it's been associated with the poverty population, but perhaps it's dynamics is not for foodstuffs, but because of the problems of the unwanted pregnancy, things along those lines now.

Q Let me just interrupt for a minute. When you talk about psychosomatic effects of pregnancy, are you relating that to, or would you just explain the dynamic relationship of that to the women's attitude towards her pregnancy?

A I guess we'll start with the definition that we use of psychosomatic condition. I guess the word gives it away. Sematic for body, and psycho for the psyche. It's defined simply as a condition manifested by a bodily symptom, organic symptom that has manifested itself in its causation or etiology in the psyche or mental aberration. Pregnancy is [1637] not the only place it's seen, of course. Just for clarification, an ulcer, asthma in young women, in children, psoriasis, but there has to be a lesion. It's very commonly—and perhaps after the psoriasis and the internist and his ulcer problems, we, in obstetrics, probably if not first, see the most psychosomatic conditions in medicine because we deal with problems of pregnancy in unwanted cases. We are probably becoming experts in that area because of that, and this is why psychosomatic clinics like my own are almost always associated when they exist. There are only a few in the country with women and their pregnancies. It's a result of our business.

Q You said that you see them associated with unwanted pregnancies. Does it—

THE COURT: Is it specific to unwanted pregnancies or just higher incidents there, or what?

THE WITNESS: It's not specific to the unwanted pregnancy, but there is certainly a much higher incidence in the unwanted pregnancy, yes.

Q Is it enhanced, Doctor, in the cases that involve the consciously unwanted pregnancy as opposed to perhaps the consiously wanted but unconscious—

A True.

Q Unconsciously unwanted pregnancy?

[1638] A The answer to your question is yes.

Q In the Florence Crittendon Home, you were working there before the liberalization of abortion; isn't that correct?

A Yes.

Q Did you see a high incidence of psychosomatic problems associated with the unwanted pregnancies?

A Yes, I certainly did.

Q Can you make any estimate of the incidence?

A The percentage—well, I hate to get into the numbers game—to give numbers, but I think I can make the point by saying it's a vast majority, an overwhelming majority of young women. If I were to say all, to give you an idea what number I'm talking about, I would not be too far wrong. I can't talk in terms of absolutes, because someone will refute one case, but it's a very high percentage.

[1639] Q We were beginning to describe some of the conditions which are psychosomatic effects of unwanted pregnancies—

A Starch intake. There are three of them. There is certainly a wide range of more vague but certainly psychosomatic conditions—the pregnacies which we have classified in this more subtle area, low back pain, for want of a diagnosis, we sometimes are forced to make the diagnosis by system. We have no diagnosis for it, but there is a very severe low back pain syndrome, which is unassociated with any of the ordinary causations of low back pain, neuralgia, bursitis, arthritis, etcetera, or any injury, of course.

It cannot be attributed to the weight of the uterus, either. Therefore, treatment and absolution comes in dealing with a patient on a psychosomatic level, and we can help them—

Q Is that a condition which can be crippling to a woman during pregnancies?

A Surely. Again, we know that we have to play a role in dealing with these women when they dysfunction, when they can no longer in their pregnancies carry out what is her base, barest function of taking care of her family and herself.

[1640] It can become crippling. Like hyperemesis, we are more, shall we say casual, about someone who has an occasional nauseous syndrome because of its frequency, because we are also not at liberty to deal with mass numbers of patients who reflect their back pain.

Another important area are any of the withdrawal symptoms of pregnancy, so-called depressive states of pregnancies, which is lumped under for the psychosomatic doctor in the vast area of the anxiety and fears of pregnancies. The dynamics could fill a textbook, but it certainly is a common finding of the pregnant woman and one of the ones we see accentuated in dealing with the unwanted pregnant woman.

Then there's been, although I've seen many of these cases, the literature is dotted with reports from several years back and even more recently on the role of certain so-called serious problems of the late pregnancies—

THE COURT: What kind?

THE WITNESS: Serious problems. The ones I'm thinking of primarily are the hypertensive disorders of pregnancy, the old term, or the toxemias of pregnancy. There are boards of doctors who deal in nomenclatures, trying to remove the word and I am training myself not to say it. The condition we mostly see from the so-called toxemias, are pre-eclampsia, [1641] the second term is the eclampsia without the "pre". It is the stage before the eclampsia.

Q What is the eclampsia?

A Pre-eclampsia—eclampsia, from the latin word meaning sudden and that's how the Greeks first diagnosed it in Athens, when there was a sudden convulsion state a pregnant woman goes into.

I guess even today unfortunately, it is a high cause of maternal morality, the leading three or four—I think it is the cause, third, of maternal death throughout the world.

In those days, it was almost universal. The babies died and the woman died. We are more fortunate today, but it's a leading cause. It is marked by convulsive episodes marked by hypertension, marked changes in renal function causing vast amounts of albumin and protein to be excreted, a change in the protein levels of the blood to danger levels and marked fluid retentions, which can be quite discomforting in addition to being dysfunctional, abnoral in content.

The pre-eclampsia is simply a stage before that without the convulsions.

Q Is this something that occurs in late pregnancy?

A Yes, only occurs in late pregnancy, although [1642] the manifestations of it probably are beginning earlier. We think it is a condition caused by certain stress factors and we do know as little as we know about it, we are convinced today, and we treat it as such, that it is a placental disorder, that it is based and the basis for it being a psychosomatic condition, is that it has basis in placental blood flow.

The one universal pathologic finding, autopsy, when women die or we see the placentas later on from it, they are markedly infarcted, very low, their blood supply was cut and this is often associated with an anxiety retention.

We think there is a tie-in there. The statistical evidence comes from our own psychosomatic clinic, a very nice study done in the years when I got there. I did not originate the clinic. It's been started before I got there and I am proud to say, popular in demand in the sense it is more accepted in my ten years. A good paper came out of our own service in the 50's, early 60's, before I got there by my predecessor, who described and made a very interesting statistical analysis of women from the general metropolitan hospital population and their incidence of pre-eclampsia versus the women who we see through our psychosomatic services and who had conditions which would lend them to be seen by us with much higher incidences of pre-eclampsia. [1643] Statistically it is more now. I mention here that it is kind of a serious condition when it happens.

Q Is this something which is always predictable in the first trimester at the time, for example, when a woman maybe considering an abortion if she could get one?

A There are certain prodromal signs, when they are manifested and frequently can be alerting a physician.

Q Would you say that you could always predict that?

A Not always, no. Some of them are quite subtle. It is a late pregnancy symptom and actually the diagnosis of pre-eclampsia cannot even be made by definition, until the twenty-fourth week, which is the sixth or seventh month.

Before then, it is not a tenable diagnosis.

Q Are there any other conditions that manifest themselves later in pregnancy?

A Such as the pre-eclampsia?

Q That you would classify as psychosomatic?

A All the rest would manifest late in pregnancy, would be a continuation of the ones I have talked about already, of course. As they become more severe, more chronologically, there is a problem; the more increased, the poor balance, poor water retention, etcetera, but the key to the conditions later on in pregnancy, I think would [1644] have to be classified in areas of the true psychologic disorders of pregnancy. We are probably aware of certain changes coming up in women in late pregnancy which are manifested by the pressure of the pregnancy, the time involved, the weightiness, psychologically, carrying a fetus to term, the fears of labor and delivery are very real factors.

From Freud on down, it has been described as a very real tense and concerning moment for a women. These are all exaggerated by typical pregnancy roles. When you get involved in a situation when there is an unwanted situation, an unwanted pregnancy, all multi-folded, exaggerated.

Q Are you saying that labor and delivery itself can be more complicated for a woman who does not want to bear the child, than for a woman who wants the pregnancy?

A I can freely say that.

Q Can you describe some of the difficulties—

A Labor, delivery—

Q That associate with a woman's attitude toward bearing a child?

A I guess the major difficulties—let's go with difficulties and sequelae.

The prime difficulties that one as an obstetrician, taking a woman through and approaching the labor would be, [1645] number one, harmful to her labor, dysfunction labor, better yet, abnormal labor, which is what it really is, prolonged and, of course, prolonged labor is always a threat not only to the maternal well-being, but primarily to fetal well-being.

We do have a certain normal labor curve, that is to be acted upon and we try to fit within that percentile with a variation. That's the first thing we say.

Secondly, what concerns us is the changes and the ability of a woman to cooperate with voluntary labor contractions in the force of labor delivery. We count on our women patients being cooperative at this particular time to deliver a healthy, normal baby.

A pregnancy, essentially, is rather than pathology in broad terms, is really a task to be mastered. It requires help.

THE COURT: A task?

THE WITNESS: A task, a job to be done. It would require the woman's aid and assistance to carry out that in a sense. This is quite delayed and even denied us at that time which, of course involves then more doctor interference in women who are not able to cooperate and give us normal labors, the incidence, of course, namely, Cesareans, but operative deliveries, [1646] forceps, which always, if not often, add to maternal, fetal mortality.

Other problems in labor and delivery are problems we have associated with rupture of the membranes. This occurs very frequently, often, too early in women who are associating themselves with harmful labors. We like them to rupture during labor or just prior for the safety factor. We have seen a number of situations in some studies demonstrated for us, women approaching labor in a harmful fashion, abnormal fashion, have a higher

incidence of a premature rupture, which not only exposes the baby, but more to certain infections that force the physician to act more rapidly in delivery and, often again, become more operative.

Any time you interfere with the birth process, any time you take away from a normal, spontaneous vaginal delivery, you are adding a certain morbidity to it automatically by interference.

Now, certainly, I don't want to leave out the fears of anxiety that are expressed during a late trimester. Again, leading back to the grand old master, Dr. Freud, many of his early teachings and those of his schools, which I guess all existing psychologic [1647] schools today stem to some degree, talk about and have demonstrated quite clearly, concerns about excessive hemorrhage, excessive bleeding, fears of even death which are markedly expressed by young women and by women going into a labor delivery.

I guess if there is any time during a pregnancy that I would be concerned about a fear of death or a fear of loss of life during a pregnancy, would be during labor delivery. I teach my students to be particularly aware of their patients during this time and have them express it if they do.

There is a way of dealing with it and exposing it at this particular time.

* * * *

[C. Krauser:]

[1749] Q How many children do you have, Ms. Kauser?

A In all?

Q Yes.

A Five.

Q Have you ever had any unwanted pregnancies?

A Three.

Q Which of your children were unwanted pregnancies?

A The first three, ——— Illegible ....

Q How old were you when your first child was born?

A 16 and a half.

Q Why didn't you want that first pregnancy?

A I was still in the house of my mother and father being a young girl my mother didn't want me to have any children. I wasn't married.

Q Were you in school then?

A Yes.

Q What school?

A Morris High School, in the Bronx.

Q Were you able to continue school?

A No, I wasn't.

Q What did you do when you discovered you were [1750] pregnant?

A I asked some friends in the street how could I get rid of it before my mother found out I was pregnant.

Q What did they say?

A They gave me different remedies, Humfrey No. 11, bitter apple, catheter tube.

Q What did you do?

A I tried to use them but they didn't work.

Q How did you use them?

A The instructions on the bitter apple was to boil it and drink it. I did and it made me very sick. The catheter tube I tried to insert it. There was some bleeding but nothing happened. The Humfrey No. 11 I just heard bells ringing.

Q Did you know whether or not any of these things could hurt you?

A Well, at the time I really didn't care. It was that versus my parents.

Q Did any of the efforts to abort that pregnancy work?

A No.

Q What about your second pregnancy; you said that was an unwanted pregnancy as well; is that correct?

A Yes.

Q Why didn't you want that pregnancy

[1751] A Because I was married then and he wasn't working. I had lost my job and we didn't have an apartment. We only had one room with a bathroom outside in the hallway. We just couldn't afford a baby. We couldn't even hardly take care of ourselves.

Q What did you do then when you found out you were pregnant?

A I was given another remedy and tried that.

Q What remedy was that?

A Putting mustard in the bathtub, drinking green gin and Humfrey No. 11 again.

Q Did any of these work?

A No.

Q Did you try anything else; did you think of anything else?

A No.

Q What about your third pregnancy; I believe you said that was an unwanted pregnancy as well. What did you do about that?

A When I went to the pre-natal clinic they assured me I wouldn't have to bring the baby home but after the baby was born they told me I had to take it home and somebody would come out—

Q I'm not sure that I understand why. Was there [1752] something you asked of them?

A Yes.

Q What did you ask them?

A I told them the situation we are living under and where we were living at and that there was no place for another baby which would have made two babies.

Q Therefore, what did you want to do with that child?

A I wanted to put it up for adoption.

Q You wanted to put it up for adoption and then they told you that you had to bring the child home with you?

A They told me I could put it up for adoption at first. After the baby was born, I understood you never see the baby after the baby is born if you are going to put it up, but they brought the baby in to me.

I asked why was this and they said, "You have to take it home first and a worker would come out to see you."

Q How long did they leave the child with you?

A The baby was four months old.

Q When what happened?

A A lady came, knocked on the door, and said she came for the baby Krouser.

Q What did you do then?

A I told her no.

* * * *

[Dr. David Bingham:]

[475] Q And could you describe how that board functioned?

A That board functioned—it was a hospital committee that was set up in which members of various departments were to come on a rotating business, to sit on that board to decide to hear each of those cases and decide whether or not they should be approved, to be performed in that hospital.

Q And would you say that the decisions of that board were uniform or showed a uniformity?

A No, the decisions, based on my experience, were rather arbitrary.

* * * *

Q Could you describe the decisions, the nature of the decisions?

[476] A The nature of the decisions depended upon several factors.

First of all, the physician who happened to be requesting the abortions; secondly, the consultants that were chosen by that physician; lastly by the composition of the board itself.

There were several members who would not approve any abortions. There were others who were relatively liberal in their interpretation of what was life threatening and would approve larger numbers of abortions.

There were physicians, at least one physician, who would only approve an abortion if the woman agreed to be sterilized at the same time.

* * * *

[477] Q Could you describe some of the differences where one board or one doctor would approve an abortion and another would not?

A The great majority of requests were on a mental standard.

There were patients who came from the board who were psychotic and truly mentally ill and chronically

mentally ill. These women were more likely to be approved just simply on the basis of a very difficult position as to whether or not what they would do during a pregnancy, in terms of suicide attempts.

Other women came in and said they were depressed. Other women said they would commit suicide but the psychiatrist said that the patient was mentally sound and even though she said she might commit suicide, the psychiatrist, in his consultative report, would indicate the risks were small.

[478] Other psychiatrists, more available to those who have money, could choose multiple psychiatrists before coming before the board, might be much more liberal in their interpretation of what risk there was in suicide.

Q Were there doctors who disregarded all psychiatric testimony or all psychiatric opinion and did not consider psychiatric conditions to be life threatening?

A There were sufficient to use statistics that suicide rates in actual pregnancy, that the actual suicide is low.

Q Were there doctors who liberally interpreted psychiatric factors in terms of their life threatening capacity?

A Yes.

[479] Q And would you say that these beliefs were held in good faith by these different doctors?

A By all, by all of the physicians, I believe their judgments were in good faith.

Q Were these simple, easy discussions that were had in the medical committee?

A No, they were an emotional and psychological drain for every one of us involved almost every meeting. They were long drawn-out arguments which were based on really personal philosophy as well as medical judgment.

Q And you mentioned another factor when you talked about what the factors were that caused the committee to approve or disapprove. You said although the physician was, who recommended the abortion was one factor. What do mean by that?

A I meant it's very difficult to turn out the chief of the Department if he requests that one of his patients have an abortion. If one of the medical residents who saw

generally what are called house cases or welfare patients, it was less likely that they could be—at least in my opinion that they could be fairly hurt.

Q You also indicated that the consultants had an impact.

A That is right.

[480] Q Would you explain that.

A Some consultants felt that what you would consider significant danger to life in some opinions would be different than another consultant whose opinion would differ as to the significant danger even though they used the same statistics indicating that some women would die and some women wouldn't. To enlarge on that, if you are talking about an individual patient as to whether or not they will commit suicide during pregnancy, you can state that the actual rate of suicide would be low. If you are talking about a standard which I felt was necessary in my own personal feeling and tried to apply this to a class of women, I know that if we applied this standard and turned them all down, that we would have an occasional suicide, that women would die as a result of our decision. So that what I considered significant and what others considered significant might vary with the same statistics.

* * * *

[482] Q In your judgment, Dr. Bingham, is there a standard meaning to the concept of life endangering or to the term—if the pregnant woman's life would be endangered if the pregnancy were carried to term, is there a standard meaning to that phrase?

A No. There would—as a question of personal philosophy, that, as he mentioned, would differ among different doctors. My definition of risk to a patient, imminent risk, a patient who is now—enters the hospital [483] convulsing from severe myoeclampsia toxemia pregnancy as a patient, if she does not have her pregnancy terminated now, she and the offspring will die. And so those patients will have an imminent danger.

There are others who have a threatened danger. Diabetes, you have heard about. Hypertensives, patients with heart disease, I have seen some because of the pregnancy

be near death and yet we—I also practice obstetrics. I worked and have been able to generally salvage these patients. So that these by some standard would be considered to be a risk to the patient's health and life and by others not a risk to the patient's life.

The patient who comes to me as in the patient in my affidavit who states that she will terminate the pregnancy somehow if I am unable to bring her into our hospital, then to me that represents a risk to her life because I have seen patients who have died from self-induced pregnancy, not self-induced abortion.

Q Are you talking about Mary Doe who I believe is your patient?

A That is correct.

Q And is it your opinion that Mary Doe, that if Mary Doe doesn't have an abortion her life would be endangered?

A It is my opinion that her life would be in danger if she would not have the pregnancy terminated.

[484] Q And is that because she said in her affidavit that she might commit suicide?

A Frankly, in her case I think the risk of suicide is relatively low. She is depressed. She at age 19 has four children. She lives in very difficult circumstances. Her depression may become worse during the pregnancy, but I don't think that she is likely to end her life, because frankly I think she is going to end the pregnancy no mater what we do, and that while she might die from trying to terminate the pregnancy, even that is unlikely. She may permanently damage herself. She may require a hysterectomy to save her as we have had to do in the past, but the threat to her life is mostly from the threat that I am unable to admit her to the hospital, that she has stated, and I believe she was telling the truth, that she would try somehow or other to terminate the pregnancy.

* * * *

[485] Q What is the system for reimbursement in Connecticut now under Medicaid?

A We must sign an affidavit that the pregnancy termination is medically necessary and then this is approved by the State. And if it is approved for payment, I am then able to have the patient admitted to the hospital or to the clinic for the procedure.

Q If you thought that your judgment would not be questioned by the State, would you certify in good faith that Mary Doe's life was in danger if she had to [486] carry her pregnancy to term without a legal abortion?

A In this case, if I were so requested to sign an affidavit, I believe that I would sign it in good faith at this—that she is a threat to herself if this pregnancy is not terminated.

Q If the Hyde Amendment went into effect, do you think you could do that abortion?

A I have a real question because people who will approve pre-payment on the State level have not stated whether or not they consider that standard an adequate standard. They have the right, supposedly, of turning us down if they don't accept it. And if they do not reimburse, guarantee payment, the hospital will refuse admission for this patient because prepayment at this hospital is required.

Q Now, could you do this abortion under the present system of medically necessary as the standard in Connecticut?

A Currently, the papers have been signed. Prepayment, pre-authorization as a medically necessary abortion has been requested and should be obtained so that she has not yet obtained the abortion, but I would expect no problem with payment as a medically necessary procedure.

Q And would there be any problem with the hospital?

[487] A At the present time, no. If those papers are signed, the patient will then be granted admission with no prepayment.

Q If you are unable to do the abortion for Mary Doe under a Hyde Amendment standard, is there any alternative for her in your community?

A My community has no funding for abortions available that I know of. I would be willing and have in some cases in the past done abortions for free, but she is a second trimester abortion. She was fairly well along

before she realized that she was pregnant. She would require hospital admission for second trimester procedure. The costs are considerable and the hospital cost in her case 250 to $300. In the New York area it would probably be about double that.

* * * *

[491] Q Then do you consider that there is a difference between the abortions that you would consider to be life endangering and abortions which are medically necessary?

A Yes.

Q And approximately what proportion of the abortions that you now perform do you think you would be [492] able to certify according to the standard you have articulated as life endangering?

A I heard the figure before of less than 1 percent. Now, from what I have said before, you could gather that my own interpretation would probably put it in the range of five to ten percent. In other words, there is a significant number of poor women in the Medicaid category who I feel that would, because their health needs are greater because their level of nutrition is worse, their levels of anemia, essentially the conditions that bring them to us, and the steps to which they are likely fall if a pregnancy were to continue, that threat is so great that they are much more likely and a much greater risk. So if I were persuasive enough, I hope that I could obtain abortions for five to ten percent, but eighty to ninety percent would be turned away.

* * * *

[493] Q If the standard of life endangering applied by the State was imminent risk of death in pregnancy or childbirth, then what proportion of patients do you think you could certify?

A I would say less than one tenth of one percent. I have done—I have seen thousands of pregnant patients, delivered hundreds and hundreds of babies, and unfortunately have to participate in many hundreds also of abortion procedures. Of these, there is not person that I would have sat down and said to that patient, you will die

if you do not have an abortion. I don't—these patients are very, very rare.

The ones that I have seen that might have been in that category were already in a coma so we didn't have to sit down and talk with them. We had to do everything we could do just bring them back, so that it is a very small number.

* * * *

[Dr. Judith Belsky:]

[3547] Q Dr. Belsky, could you give us your general observations about the mental state of those persons that you interviewed in 1969 and 1970?

A A very large proportion of them were fairly depressed and agitated and sometimes panicky. Many of them were having nightmares, some of them were feeling unreal or depersonalized. Some of them were becoming very disorganized and some were actually psychotic. Some of the [3548] patients were ruminating about suicide, some had made atempts during their pregnancy, some of the patients had already tried to abort themselves or had gone to somebody else in an attempt to interrupt the pregnancy and some of the patients were also so destroyed and so unable to control themselves that they were in some cases abusing and neglecting their children.

* * * *

[3622] Q Yes, on women who had not previously been diagnosed or treated for psychiatric illnesses?

A There again it is a stressful situation and how much stress there is depends on I think to some extent the availability of abortion.

I think that at the present time I do not see as much stress in the patients as I did when we had a very restrictive abortion law.

Q Do you feel that the population of women that you see are more likely to develop mental illnesses under stress than the population at large, or than the middle class population?

A In some respects I do.

I think that poor people in some ways are subject to so much stress in areas that middle class people just don't experience stress or just take for granted things that

they have and don't appreciate how wearing it can be. For example, if you are on Welfare and your Welfare check doesn't come or the mailbox in your building has been broken [3623] and your check is stolen and you have got to go to the Welfare Department and stand on line and maybe you don't see your Welfare worker that day, well, that is very frustrating and stressful, especially when the Welfare people don't care whether you do or you don't get your money.

I have patients who live under horrible conditions in terms of housing—

Q What do you mean horrible conditions?

A Well, living in very dilapidated buildings where they have ceilings crumbling, where they don't have heat, where there are rats and the rats get into an open package of food.

I have one patient who is terribly distraught, and this is not a psychiatric woman, she is a woman who has an anxiety neurosis, but she has become very very agitated over the fact that—well, people whose husbands have lost jobs, they have to move to a very dilapidated building and there are rats in the apartment and no matter how clean she keeps the apartment every morning she finds rat feces on the stove. The refrigerator is too small to put everything in and she has a five year old son who won't sleep anymore by himself, he is very frightened by the rats and he is agitated.

I think this is the kind of thing that poor families have to deal with every day which is very stressful.

[3624] I also think poor families tend to live in areas with very high crime rates, and I know my patients talk about their bad experiences. For example, women who live in a building which, let us say, is on some street on the lower East Side or in East Village where a very large number of drug addicts congregate and where there is a very high crime rate, these women are very frightened just to walk down the street during the day. Sometimes the locks on the front door are broken so that there are addicts and other people who may asault them, hanging around in the lobbies of the building.

A number of my patients have been attacked in their buildings and I think it is stressful to any woman who has been assaulted or raped, or even if the rape has not been completed, it is just the thought and the fact that it was attempted which is very disruptive.

I think it is the combination of all of these factors and a kind of hopelessness that goes along with it that makes the patients I see at Bellevue more vulnerable to break down under stress because the unwanted pregnancy is one more stress added to a lot of other stresses and they don't have the same kind of help available that middle class people have.

For example, if a poor woman has not got any [3625] close family and has a child and she has difficulty coping with the child, it is hard for her to get anybody to help her out, but if a middle class woman has difficulty coping with a child, and I have had private patients who have emotional problems which makes it hard for them to cope with a child, but they usually have the money to hire somebody like a housekeeper or nursery schools are more available because they can pay for them.

I think, too, that money makes a difference between middle class people who have the option and usually if they really want to abort their pregnancy, they can get a safe abortion either legally in another country or a safer legal abortion here done by a doctor rather than by somebody without any medical training.

I could see sometimes a difference between the private patients I evaluated for abortion and those in Bellevue, my Bellevue patients that I evaluate for abortion. The private patients weren't really as desperate because they knew they had these other options.

* * * *

[3628] A The next article is, "Children Born to Women Denied Abortions." This is the first author's name is Pytrych. This is a Czecholovakian study. They studied 220 women who were denied approval for abortions and they compared them with a control group of 229 women who were matched for various factors like economic data and married data—

THE COURT: What was the controlled group, did they also have children?

THE WITNESS: Yes.

THE COURT: These are two child bearing groups, one unwilling and the other presumably willing—

THE WITNESS: The controlled group didn't request abortion, but they were of the same age and had the same social condition. They found that the children who were born of the women denied abortions tended to have a higher incidence of illness and hospitalization, to have poorer school performance despite the same level of intelligence as a control group, and they had somewhat worse integration with [3629] their pier group. The authors felt that these examination of these children which was done at the age of nine were suggestive of a potential for future maladjustment in these children and they pointed out in their study they excluded women who placed their babies in foster care or for adoption. They didn't study those children who were in foster homes who might have a higher incidence of disturbance.

Q The group study was only the group of women who kept the children with them after being denied abortions?

A Right.

Q Yes?

A The next study is a British study by Pare & Raven. The title is, "Follow-up of Patients Referred for Termination of Pregnancy." These authors studied 321 patients who had been considered for abortion and they found that abortion—

Q Considered for abortion, you mean before an abortion committee?

A Yes. Under the British rule. They found first of all, in those who did have abortion, there was relatively little psychic disturbance following the abortion. They found that among the group who had been denied abortions and who went on to continue the pregnancy, that some of these [3630] parents showed some very serious psychic problems and some had to be hospitalized. They commented if they could have reconsidered they would have recommended that some of these patients have abortions. They also found about ⅓ of the mothers who kept their babies said that they resented them.

Another finding of theirs was of somewhat similar to mine, of 120 patients whose request for abortion was not approved—36 percent got abortions elsewhere.

MR. RUDOFSKY: I couldn't hear that.

THE COURT: 36 percent of those who are refused abortions obtained abortions elsewhere.

Q That was Plaintiff's Exhibit 162?

THE COURT: It was.

MS. BENSHOOF: Yes.

A The next study was a Swedish study. This was a follow-up study of 120 children born after application for therapeutic abortion was refused. These children were studied at age 21 or up to age 21.

THE COURT: You mean they were followed until 21?

THE WITNESS: In other words, they picked for those children—children born between 1939 and 1941. They had a control group where they took the next same sex child born in the same hospital after the [3631] child born to the woman who had been denied an abortion. They found that on certain measures there were significant differences between the study group and the control. This was true in terms of the instability of the homes, either in terms of divorce or that they were out of wedlock children or that the children—there were complaints of neglect or abuse of the child.

They also found a significant increase in psychiatric problems—

THE COURT: In the children?

THE WITNESS: —in the study group, the group of children that had been unwanted as compared with the control group. They found a significantly greater amount of delinquency in the study group as compared to the controlled group and they also found a higher proportion of these study groups to be receiving public assistance.

Another measure which they found a significant—statistically significant difference was that the study group children had less higher education when you allowed for factors like social class and intelligence, even when you just compared a study of the controlled chil-

dren of the same social class, they still had [3632] less education.

The next study was a Norwegian study from the University of Oslo. This was a study of mental disorders following pregnancy in manic depressive women. Essentially, this study shows that there was an increased incidence of serious depressions in this group of women following delivery.

The number of depressions were much higher than would normally would have been. In their summary, they state it occurred in 37.8 percent of the 82 women—

THE COURT: Excuse me.

THE WITNESS: Postpartum mental disturbances occurred in 31 or 37.8 percent—or 37.8 percent—

THE COURT: I can't connect the next syllable.

MS. BENSHOOF: Out of the 38 women, 31 women had the postpartum depression.

Q What was the conclusion of the study as far as relationship of child birth and—

A They concluded that child birth represented a stressful factor for these women that contributed to their breakdown.

* * * *

[3633] Q Dr. Belsky, have you ever treated a patient having children dying for a genetic disorder?

A Yes.

Q Could you describe your experience in that area?

A This was what one woman who come to the prenatal clinic pregnant and I was asked to see her because the gynecologist recommended an abortion on the grounds, first of all, she had two children who died of a rare genetic disorder called Lieber syndrome.

According to the hospital chart, this woman was schizophrenic and made a suicide attempt and admitted to Bellevue's Psychiatric Hospital. I evaluated her and she wasn't schizophrenic—

THE COURT: What was that?

THE WITNESS: She was not schizophrenic, but she was very depressed. She wanted very much to have a normal child. She described her experience with these two children. Lieber syndrome is a severe [3634] dis-

order of the central nervous system and her babies were both blind and severely retarded, unable to recognize another human being, unable to sit up, talk or walk. One of them lived to be four and one lived to be two and a half and essentially they were vegetables. There was no meaningful existence, really, for these children or any meaningful relationship with anybody else.

I think the only reason they lived was because her devoted care. They eventually died of pneumonia. She had been very depressed when she would take care of these children and she made the suicide attempt following the death of one of the children when her husband and her family—husband's family blamed her for the disease and the death of the child.

She told me that she had been divorced by her husband. This current pregnancy was by her boyfriend. She didn't know whether this child would develop the—

THE COURT: There would be about a 50 percent chance?

THE WITNESS: —and the gynecologist didn't know either and we had her see the geneticist in the Department of Medicine and he reviewed the autopsy reports and the slides of the two babies and he told [3635] the patient that there was no test that could be done to detect the syndrome. It is a very poorly understood—

Q Amniocentisis could not be done for this disease?

A They could not be able to tell. All he could do for her was calculate the statistical risk that this child would be effected and he calculated—it was a little complicated because the boyfriend was a second cousin which increased her risk. So her risk was like 12 percent or one in 12. Should she elect to take that chance and to have the baby, and fortunately, the baby was normal, but I treated her for a number of years after that because first of all, she was chronically very depressed in large part because of her experiences with these very defective children and her feeling that it was some how her fault and it was something bad in her that had caused this to happen.

Also, she had difficulty with her normal child because she was constantly afraid that this child was going to

develop signs of Lieber syndrome and she was afraid to be attached to the child, for she was afraid she would lose him and she would overreact if he would spit up while feeding which is normal, but she had trouble differentiating that.

Q What would you think would be the effect of [3636] denial of the abortion option in these cases, in cases where women have potentially defective fetuses and those defects can be diagnosed through amniocentisis?

A I think if a woman wants an abortion—if she knows she is carrying a defective child and the abortion is denied her, I would expect a serious psychiatric problem during the pregnancy and even afterwards when the child is born.

Q Do you feel women who have such children can have or do have severe and long lasting mental damage?

A Yes, I think some of them do.

Q Doctor, what is your experience with the mental effects of women who have obtained an abortion as opposed to those women who have carried unwanted pregnancies to term and give up children for adoption?

A I did try some follow-up, some of the patients that I was seeing for therapeutic abortions in the beginning before they got to be patients and I found that patients usually were relieved after the abortion and their psychotic symptoms abated. Even some patients who had been psychotic seemed to reorganize rather quickly even if this they [sic] hadn't any chronic problem. With patients who were chronically psychotic, the abortions did not cure their schizophrenia. I didn't find any real pathological effect. Some patients [3637] told me—this is not my observation as it was reported to me—that they had given children up in the past for adoption and that they have never gotten over a sense of loss—

Q These are the same patients who later had abortions?

A There were some patients who had both given up the baby for adoption and had an abortion. They said giving up the baby for adoption was much worse. Whatever guilt they found—that they had about the abortion they got over, but that they never could get over the sense of loss of the child that they had given away and they also wondered where the child was.

Q And you treated these women who had given up children for adoption?

A These were patients that I interviewed during the time that I was evaluating patients for abortion.

* * * *

[Dr. Jane Hodgson:]

[37] Q Were you ever questioned in your judgment of an abortion you performed during that period under the standard to save the life of the mother?

A Yes. I can think of one in which I received a lot of criticism.

That was a woman who had cancer of the breast and radiation therapy and her prognosis for survival for five years was about 50 percent.

She was the mother of three boys and was trying to adjust her shortened life expectancy and trying to lead a happy life and when she could not use oral contraception because of the danger of the pills accelerating her disease she was using a diaphragm for contraception and experienced failure and came to me with a pregnancy which she wanted to interrupt because she did not expect she would live to raise her children and I felt her wishes should be respected [38] in this regard and performed an abortion and was openly criticized for this. So, there was no real standard of medical indications at this time.

Q During this period did you have occasion to treat women who resorted to self-abortions or obtained criminal abortions?

A I saw a great many of these. I think being the only woman gynecologist in St. Paul, I had more than my share, particularly the young teenagers, the students who would come to me with problem pregnancies. I was unable to help them. I knew what would happen. I advised them against illegal abortions but I knew full well they would be back to see me after their illegal abortion

and were bleeding and possibly sterilized for future pregnancies.

Q Did you treat many of these patients at that time?

A Very many, yes.

Much too frequently.

Q Could you explain some of the medical indications that occurred from self-abortive techniques.

A Largely pelvic infection, septicemia, severe infection with actual death or high possibility.

There were annually, several deaths in this country from criminal abortion and our wards at St. Paul Ramsey [39] were filled with patients suffering pelvic infection, secondary infection. Now we don't have that. It has been a miracle since 1973.

Q When you treated these patients who had criminal abortions did any of these result in permanent health problems?

A Oh, yes. Some of them were made obstetrical cripples. They would be permanently sterilized due to the severity of the infection.

Q Were you ever prosecuted under the standard to save the life of the mother in Minnesota before 1973?

A Yes.

I challenged the Minnesota Abortion Law in 1970.

Q Could you explain the circumstances of that challenge?

A A woman that had had definite evidence of Rubella in the third week of her pregnancy came to see me wanting an abortion because of the danger of congenital defect.

I went to the District Court and asked for an injunction to prevent my being prosecuted and for permission to perform this abortion. This was not granted to me and because of the time element I went ahead and performed the abortion and informed the Court and was indicted and convicted, and

* * * *

[43] Q Dr. Hodgson, have you examined the language of the Hyde Amendment?

A I have.

Q Is there a standard medical definition of the phrase, when the life of the mother would be endangered if the fetus were carried to term?

A That is a very ambiguous statement. It actually means very little to me.

If you take it in the strip sense of the word, there would be no such cases essentially because in this day of modern medicine it is possible to get almost any woman through a pregnancy as far as her actual physical life is concerned.

[44] However, if you are simply talking about endangering her life then it is a matter of degree and what are you talking about—her physical life, mental, emotional, social life? There are [m]any (sic) degrees of interpretation that are possible.

Q So, your answer is there is no standard?

A Absolutely none.

Q Have you recently examined any patients and had to confront the language of the Hyde Amendment?

A Every day.

Q Before the temporary restraining order was entered by this Court last week, did you have occasion to have to try to interpret this language?

A Yes. I think you have the affidavit of one of my patients that I saw last Friday who was a mother of four, a 24 year old woman who had delivered last November and she—during which time she developed a severe case of phlebitis which required a long hospitalization.

She had not recovered from the phlebitis and again appeared pregnant and was asking for an interruption of her pregnancy.

The phlebitis itself is an extremely serious complication of pregnancy because of the great danger of blood clots to the lungs and the problem of treating it [45] during pregnancy is that the drugs that are used that prevent blood clots are very dangerous to the fetus, so if the pregnancy continues you simply cannot treat the phlebitis. That is an example of the type of problem we run in to. Does this actually endanger her life? At the moment she is not really in any great danger but prob-

ably would be. How soon or how much does one's life have to be shortened?

* * * *

[50] Q The Hyde Amendment, if it were implemented, would you be forced to refuse to do abortions on women with medical problems and whose abortions you feel are medically necessary?

A I wouldn't be allowed to admit them to the hospital so I would be unable to take care of them, right.

Q Could you give us some examples of health threatening problems that you feel you would have to refuse to do abortions on these individuals?

A Well, I am particularly concerned about the very young patients.

We have a large number that are in their early teens. These youngsters that are under 15, I am talking about.

These, of course, while their life is endangered inasmuch as the risks are so much higher for the young teenager for carrying a pregnancy to term, I doubt if there would be allowed, or this would be allowed under the Hyde Amendment; so these girls are often the ones that are Medicaid patients.

I am concerned about the IUD patients, the number of IUD failures.

[51] We noted in Washington where we had such vast numbers of patients that at least three percent of our patients had IUD's in place, there were IUD failures.

Another recent spotcheck in Minnesota revealed that seven percent incidents of IUD failures in the abortion applicants was the case and it has been publicized a great deal that the risk of IUD's in pregnancy and the danger of infection and the FDA has urged all women to be alerted as to the risks.

What will happen to this type of case, under the Hyde Amendment is not mentioned in the conference report.

Q You stated that the FDA, you mean the Federal Drug Administration has alerted women as to the dangers of IUD?

Does the FDA recommend to doctors that they suggest abortions?

A It has been so suggested.

Q By the FDA?

A Yes.

Q What would you do if a Medicaid patient has an IUD failure?

A I don't know.

* * * *

[67] Q Let us say death during the course of the pregnancy to at or about the time of delivery. In other words—well, all right, let us take one part at a time, during the course of the pregnancy, which ones bring to your mind that possibility?

A Well, IUD in Utero, and it has been pointed out that a woman that conceives with an IUD in Utero runs a high risk of serious infection during the second trimester, and there are a number of cases that have been reported, of 75 or 100 I think at least, of death to the woman during this second trimester because of overwhelming septic infection.

[68] Q Let me stop you there.

Is that the kind of condition that you can monitor?

A No, you can't monitor it. I have delivered any number of women at term with their IUD's and they never turned a hair or ever had any problem.

Q Can you determine at the outset whether a woman has an IUD in Utero?

A Yes, you can.

Q Is that something you can watch as time goes on?

A You can't tell which ones are going to get infected, you have no way of knowing that.

Q Can you tell when they become infected?

A Once they are infected it is too late, it is an overwhelming thing that occurs in 48 hours in some of them.

Q What others?

A It is like lightning.

Q What others?

A What others?

Well, a woman with a severe hypertension, for instance, could have a stroke.

You don't know.

* * * *

[Dr. Christopher Tietze:]

[957] Q Do you have reason to expect that the rate of complications or death from illegal abortions in this country would be higher with the implimentation of the Hyde amendment than under the old criminal abortion statutes?

A I would expect that the number of deaths due to illegal or criminal abortion would be greater. Now, the abortion that the death rate—the death case rate would be lower because back in the early 1960s a very large proportion of illegal abortions were performed by physicians, including some very experienced and very careful practitioners and probably the mortality associated with these abortions was quite low and of course there were (they) also cases—probably a minority of cases—aborted by self-aborted or aborted by unskilled practitioners with a very much higher mortality.

Now, if the Hyde amendment forces some women into illegal abortions, the mortality of—for these women who have the illegal abortion would be very much higher—would probably be substantially higher than illegal—than mortality of illegal abortions was in the [958] 1960s, because all of these abortions would be performed—done by the woman herself or by unskilled people.

If she had the money to pay a doctor she could get a legal abortion. She wouldn't get any illegal abortion. The whole character of illegal abortions in '78 would be quite different or in 1976 is different from the character of illegal abortions under the old law when some doctors were involved.

THE COURT: Were there any statistics in the pre-1970 period on deaths which were attributed to complications rising out of abortions?

* * * *

THE WITNESS: You will find a similar table in the fact book, I think it's Exhibit 8, back on Page 62 and the graph on 63 but I have carried it for another couple of years since then. I will [959] go through these statistics.

These are the total number of deaths associated with

abortions by the type of abortions. I am using the term abortions or abortion-related on purpose.

It's not the same as attributed. It's a broader term. There are some women that die in connection with abortion. A woman with a severe heart condition who undergoes abortion but dies soon thereafter, she dies of heart disease.

Or another woman might die of cancer. Such cases would not be attributed to abortion in ordinary statistics but they are included here.

They are included in these statistics. Around 1960 we had on the average about 300 deaths attributed to all types of abortions. Of those only a handful, five, were attributed—were associated with legal abortions, because there were very few legal abortions at that time.

The rest were due either—were associated either with illegal or spontaneous abortion. We cannot make this distinction until 1968.

If you look at the statistics—at the first column, going from 1960 to 1969, you can compute an [960] average annual decline in the number of deaths on the order of seven percent per year.

Now, illegal abortions in 1969 were on the—the deaths—were on the order of about 100 and they have declined very, very rapidly and about 40 percent per year and in 1975 the CDC identified only five cases.

Actually they identified only four cases but they had one case that they couldn't decide whether it was illegal or spontaneous or whatever, so I also try to set my statistics against what I would like to see, bending over backwards as it were, so I included the illegal death here. That's a decline of about 40 percent per year.

Now, at the same time you see an increase in the deaths associated with legal abortion. You see a quite high figure in 1970 and 1971, when doctors were learning how to do these things and then it has settled down to about 26 per year, although the number of legal abortions has continued to increase.

But even if you include all abortions, legal and illegal, and spontaneous, you will find an annual decline, I think, of about 23 percent per year from 1969 to 1975.

[961] Q Now, from knowing the number of deaths—

THE WITNESS: Does it answer your question, your Honor?

Q From knowing the number of deaths from the legal abortions can you predict the number of complications?

A Well, according to the JPAS study and new data from the JPAS CDC study, I would say major complications run to 100 times the number of deaths and total complication ten times the number of major complications.

If a person dies that's a fact, you can argue for the proper attribution of the death. To define a complication and to define major complication is also subject to argument. These softer figures are the figures of death.

Q Can you also predict from the number of deaths the total number of legal abortions performed?

A That's very difficult because we really never had —we have the numerator, even some questions about the numerator—that's the number of deaths. We never had a good denominator. There has been a statement widely quoted of a million illegal abortions in the United States in the early 1960s, the number was probably smaller in 1969 because of more contraception.

Then you have this factor that the mortality [962] of illegal abortions probably—the mortality of illegal abortions probably has increased because the group becomes more and more limited to the self-abortion than to the butchers.

All I can say, because of the last factor the decline in the number of illegal abortions probably has been greater, percentagewise, than the decline in the number of deaths, because the thing has become more dangerous.

Q Can you explain or describe some of the complications from illegal abortions that you would characterize as major?

A To be fair you would have to provide the same criteria to legal or illegal. In the JPAS study we defined the major complications as follows: We had three categories that accounted for 90 percent of all cases. We included every case of unplanned major surgery, would it be laparotomy, opening of the belly, and repairment.

It would include a hysterectomy, a removal of the womb because of uncontrollable bleeding, and any operation necessary for injury to other organs such as the intestines.

Secondly, we include any case of, I think with two or three days of fever more than 38 degrees C., and [963] any blood loss of more than 500 milliliters, I would have to check that figure, and then these three causes, major surgery—major hemorrhage and major infection would account for 90 percent of all the cases that we had classified as major complications.

Then there was a mixed bag of other diagnoses which, with the advice of gynecologists, we decided were equally serious.

I would of course apply the same criteria to illegal abortions and the number of professional abortions, but it would be rarer with the spontaneous abortions than with the legal and would be more frequent with the number of illegal abortions.

* * * *

[975] Q Dr. Tietze, are you familiar with work that has been done involving Irving Siefer defect or diseases in the fetus during pregnacies?

A In a general way.

Q Could you describe some of the conditions that can be discovered through this method and what point [976] in pregnacies they can be discovered?

A In general—the conditions are of various kinds. Many of them are chromosomal abnormalities. As you know, the human body, the body of all other living creatures is made up of cells. The cell has a nucleus and within the nucleus, you have a certain number of chromosomes, actually 48 in the human. Anomalies of these certain major physical abnormalities are associated with abnormalities in the structure of the chromosomes.

The fetus, also, has its own set or its own set of chromosomes and they are in all its cells, including the cells on the body surface, on the skin, which are sloffed into the amniotic fluid in which the fetus swims and you can withdraw a certain amount of this fluid and centrifuge it and have a look at the cells, cultivate the cells, let them grow and if you examine them under the microscope you also can consider for other diseases, you can

do other certain chemical examinations; however, the procedure by which you draw the fluid which is called amniocentesis cannot easily be done before 16 weeks of pregnancies.

Q So it can't be ascertained until the second trimester of pregnancies?

A Well, into the second trimester.

[977] Q Could you describe several of the conditions that are discovered?

A The one which I think is the most dramatic one in this case is the disability known as the Taysachs disease. These are the names of the two physicians identified with the description. It is also known as Amaurotic Idiocy. The peculiarity of this condition is the following: It is almost entirely limited to a very well defined population group; namely Ashkenazi Jews, Jews of eastern European origin. Among this group of people, about one person in thirty is a carrier of the disease which means that he or she has the genes for this particular abnormality in one half of his or her chromosomes.

When you have a mating, marital or otherwise, of two carriers, one fourth of the children would suffer from this condition. The important thing about—since one person out of thirty is a carrier, about one mating in 900 among Ashkenazi Jews in the United States would be a carrier mating and would have one chance in four to produce a child suffering from this terrible condition.

The important thing is that you can identify the carriers by a simple blood test. If you find a carrier mating you can then perform amniocentesis and identify the fetus with a double set, in effect, of [978] chromosomes.

In other words, the fetus that will eventually develop, suffering from Taysachs disease with virtually 100 per cent certainty. This is a terrible condition. The children are born normal. In fact it is said that they are particularly beautiful children and they seem to develop quite normally, but at six or nine months, things change.

They may have learned to sit up at that time. They may be able to stand but at that time the mother will notice changes in the child's behavior. He can't sit any-

more; he can't sit up. He's slacking, he's paralyzed. That's the same time the child ceases to react to certain stimuli. But 12 to 18 months the child is blind as well completely paralyzed, but he usually continues to live for another few years.

They are all dead by five years of age and preceding that they have to go through a period where they require the most intensive care.

[979] DIRECT EXAMINATION

BY MS. COPELON: (Continued)

A (Continuing) They can't—they have to be tube fed because they can't swallow. Secretions accumulate in their lungs and bronchial passages which have to be aspirated all the time. They have to be turned around in their cribs because they get bed sores. Eventually, they go on to have convulsions which may come as often as every hour. It's an enormous problem, financial and emotional problem for the parents as well as, I would say, a most miserable way of dying for the child. It is something that a skillful community organization, bringing all the young adults of child-bearing age to have the simple screening test and then following up for those who want to, by testing of the pregnancies, can, again, be eliminated in about 100 percent certainty without having to wait for the first defective child to be born.

There are other conditions of this type where you cannot identify the carriers and where you have to wait until the defective child is born, and then you can check future pregnancies if the parents have the fortitude to undertake an additional pregnancy, but with Taysachs, you can prevent it from the very beginning.

Q Do you think that this condition would qualify [980] under the Hyde Amendment standard for reimbursement as one which makes abortion necessary in order to prevent endangerment to the pregnant woman's life?

A That would again depend upon the interpretation of the physician. There are some physicians who, philo-

sophical or otherwise, reject abortions altogether, and they would feel even the suffering to the child and the parental anguish to the mother of that child does not cause a demonstratable illness. On the other hand, there are many physicians who would feel that the degree of stress imposed on the parents of such a child, particularly in the first instance of the mother of such a child, is so great that this is absolutely a situation of medical necessity.

Q Of medical necessity?

A That's right.

Q Do you think it would qualify as a situation of life endangerment to the mother?

A That would depend upon the interpretation by the physician and it should come to a determination by the department perhaps of the opinion of officers of the department. I have no knowledge how they would decide.

[981] Q Under the old life-saving standard, under the criminal statute, it is true that abortions were performed for women that had German measles?

A Yes. I would say something on the order of 4,000, perhaps, in 197— Excuse me, in 1964 and perhaps another thousand in '65, because physicians had come to the conclusion that this was the kind of emotional stress they could not expect a woman to take upon herself and therefore they did perform these abortions although they were not permitted under the wording of the law in any state.

So I would assume that many—there are fortunately not as many pregnancies affected by Tay-Sachs in the United States as there were in '64 affected by the German measles epidemic, but I would expect many physicians would take the view that this was a case of medical necessity.

I think the patients wanted to have the determination made, and the abortion performed. I think many physicians would agree and take chances of not being paid or being sued for fraud.

Q Doctor, are there other conditions that can be identified through amniocentesis?

A Yes. The most common one is what used to [982] be called mongoloid idiocy, but in today's days we don't use the term any more and call it the Down's Syndrome, or g. trisomy, because the chromosome is affected.

There are three chromosomes there instead of two. That is a condition that is not hereditary as far as we know, but it is a chromosome that tends to develop in women when they get older, at the end of the child-bearing period, and is quite high for women over thirty-five, and decreases with advancing age, so that I think it has been proposed, and I agree with the proposal, but women above thirty-five and certainly pregnant women above forty, should be screened for by amniocentesis if they consider abortion in order to identify the Down's syndrome fetus and then not permit it to be born.

Incidence for these women is about one in forty.

Q Are there a number of other conditions that are much less frequent?

A There are a number of chromosomal conditions, about sixty, according to the geneticists. A number are quite rare. Not all of them have been identified in a fetus, but they could be identified in a fetus.

* * * *

[Dr. Adele Hoffman:]

[1336] Q Is there a standard medical definition or do you understand what the phrase means, when the life of the mother would be endangered if the fetus were carried to term?

A I do not understand what it means. And it is not a common phrase in the medical parlance. It's extremely vague. I would have a great deal of difficulty if I were asked to write guidelines in terms of how to implement this.

Life endangerment can mean anything in terms of what you define life as. In my judgment, you can define life as something extremely ordinarily in terms of breathing. Does this mean, then, that I can't do anything if it were to render the patient comatose, but that I could maintain them on a respirator? Do I have to use

the Harvard criteria of death which is basically—which is basically indicated by the presence of brain activity, by electroencephalograms, and according to the Harvard criteria, promulgated primarily in instance of comatose individuals when they have died [1337] because we can't support life by a respirator, by cardiogram pacemaker, by renal dialysis, and that the former criteria of life which used to be established as to whether the heart was beating and the patient was breathing are no longer valid criteria of life.

Does this mean, then, that life is solely that if I can only perform an abortion under those circumstances in which brain wave activity would be terminated if the pregnancy were continued. I would find that would be the strictest and the narrowest definition of life endangerment. This is not a definition that I as a physician could possibly operate on. I cannot operate in a situation where I have to study and measure risk solely on brain activity.

Let's go on—take it one step which might be seen as pretty extreme, but I will bring it in, as to whether a person's life is going to continue, life [like] (sic) breathing. And I think the Joann Quinlan case was the extreme of consent and suppliant life that life was being able to think rationally, one was able to exercise one's own judgment within that life. Is that what we are talking about?

If you are, then one has to also begin to look, does life mean that the individual is crippled, is maimed, but is able to think? Well, what about their physical status? Does it mean that a young woman who may have to have a [1338] Caesarian section—and we will get into this a little more later—because she is so young as a teenager and the baby at term is large, does this mean that the increased probability of having to have a Caesarian section, that that has anything to do with life? Because each subsequent operation increases the risk to her life. There are so many areas.

Q Are you saying that one interpretation can be more broad than the very narrowness and would involve a risk calculation or increase a risk calculation?

A Yes. I think a physician always operates on [the premise] (sic) that he can't predict these things. We are getting into predictability. I operate on a combination of the risk benefit ratio of anything that I would recommend to a patient being medically indicated or medically necessary and the probabilities of the risk of not having that form of treatment. I can only operate on that aspect benefit risk ratio and probability of things happening. There is no way we can gaze into a crystal ball. One has been surprised by the number of patients that haven't gone along predictable paths where you think everything is going to be fine and then they get into trouble or vice versa. So that I really can't—in terms of deciding about endangerment of life, I can't make that anticipatory decision really even if I knew what it meant.

[1339] Q Doctor, I would like to call your attention to the phrase in the Hyde Amendment, would be an endangerment, which is, of course, a future tense. Do you feel that this phrase, would be if the fetus is carried to term—that is, the future—that that increases the burden on the doctor in anticipating risk because it is a future tense?

A Well, of course, there are always—if you're working on probabilities, it would be implying the future. At least, the burden of proof in essence is up to the physician. I think it's one of the great problems in all of health care in which one has to come to expect good results uniformly and that issues of negligence and risk are not really so considered as just expectancies of good results regardless of what this is. Let me take another example that illustrates the kind of difficulty that I have about this terminology which is so totally different from the area of pregnancy and abortion.

Let's say I see a child in the emergency room with a strep throat or a sore throat. This might be due to the strep organism. Let me say I guess it is. If I treat that patient with penicillin, I will probably cure that strep throat. But if I don't treat him he will probably get better and get over it anyway over a period of time. The risk, the probabilities are that he will get

better. Let's [1340] say that I don't treat it and he does get better. He is now a greater risk of developing an immune disease of rheumatic fever.

Q Do you mean even if this child gets better there is that risk?

A If I had not treated him with penicillin, the bacteria would stay in his system and this would be called an immunize condition in which he becomes—his heart muscles react against this toxin that is in his body and he will develop rheumatic fever. Let's say I don't treat the rheumatic fever and let's say it's an adolescent. Because the older person is less likely that they would have this condition. He probably will recover from that. But the probabilities are that he will have persistent heart damage and that his life may be curtailed at 20 years.

In drawing the parallel—and the reason I want to bring this kind of a situation up is because it's very clear and it does have the issue that we are talking about. I have three points in the treatment. At least each point I may treat without there being a serious risk immediately of life endangerment, but that it has a series of consequences which will ultimately bear a real potential, but not a guaranteed likelihood of life curtailment in the long range. And even if he gets a heart disease and he's 40, [1341] and he has heart failure because it's an inflammation of the valve, I might even be able to operate and replace the valve or I might be able to place him on Digitalis and give his heart muscle greater strength by virtue of the effects of that drug. So I just have to state that there are many alternatives. I would think I would be medically remiss not to effect treatment at the earliest potential in that child and that I would be viewed by my medical peers as negligent if I did not treat that minor preventively in the first place by giving him penicillin when he first came in with that strep throat.

Q Thank you. Doctor Hoffman, I would like to read you a definition of whether an abortion is medically necessary by the Supreme Court.

Whether an abortion is necessary is a professional

judgment that may be exercised in light of all factors: physical, emotional, psychological, familiar and the woman's age-relevant to the wellbeing of the patient.

Doctor Hoffman, do you agree with this criteria for defining a medically necessary abortion?

A I have read that statement before and I would agree 100 per cent with it. It would express much more succinctly how I would describe it. Yes.

I would also, if I might, say I would find a [1342] great deal of difficulty not equating medical necessity with that which I would have to carry out in order to avoid life endangerment because I would consider these two situations—for myself I would have to because I could not manage the patient's responsibility otherwise as almost synonymous.

Q Do you feel that under the medical standards or the standard—do you feel that under the standard set up in the Hyde Amendment that medically necessary abortions will not be covered?

A I would like to say I know that they won't be. I really can only conjecture. I certainly believe that it will pose serious profound strictures on the availability of abortions to Medicaid eligible adolescents.

Q Doctor Hoffman, do you consider all abortions medically necessary?

A I consider all abortions medically necessary in adolescents because of the very significant increase in biological and psychological risks to the teenager. It is difficult for me to conceive that our medically biological or sociological 14 or 15 year old is ready to bear a child, or is ready for parenthood or for any other aspect of childbearing and child rearing.

Q Doctor Hoffman, based on your experience at Bellevue and your related experience in various other [1343] hospitals that you said you consulted with, do you feel that if word goes out to teenagers that abortions are only available to them under Medicaid, if there is a life-saving standard or life endangering standard that they will come in to even seek a doctor's care or advice for a suspected pregnancy?

A Any impediment to the access to health care has been regularly shown to decrease the number of young people coming for help regardless of what it is. Young people have a terrible time with simply all kinds of institutional rules, regulations and registration. We have enough difficulty getting them in for routine health care much less care that is going to be associated with various issues such as who pays, the kinds of social sanctions that may be weighed upon them, the problems this raises in relation to a whole host of issues in their future choices. I believe any impairment, and particularly an impairment about having the economic factor enter into it will serve as a very profound barrier to young people coming to health care in this area.

* * * *

[1348] Q Is there anything with the teenage endocrine system or you know, physiological system of a young teenager that would make them predisposed to catching or developing toxemia?

[1349] A It could be. I don't think we really know the effect upon the growing individual of these—because it really is a relatively recent phenomenon that young people under 15 are having as many children that we can begin to look at statistics. We do know that in animal studies, that early pregnacies can cause stunting and runting. That is in rats, if pregnancies are induced at the time of first ovulation that the rats will not complete their growth.

We know that adolescents still—girls have still about two years to grow after their first menstrual period, but that they are capable in many instances of becoming pregnant at the time of the first menstrual period.

There is a common belief that adolescents don't ovulate early in their menarche of life. While this is true for a goodly percentage it is not true for certain selected youngsters. We have seen quite a few, obviously attested to by the growing increased number of kids who are pregnant under 15.

I would feel that young people who are two years—still within a two-year period after first menstrual period,

still are growing—they still are in their puberty growth spurt, still amassing bone, muscle, expanding their blood volume, need iron for their expanding blood, red blood cells and so on.

[1350] Pregnancy at this time—there are very major obvious endocrine changes going on at this time with all of the development issues in terms of going from non-reproductive to a productive individual. So I would say that there is a real likelihood of increased predisposition to all of these conditions as a basis—based solely on lack of maturation and I do define this specifically for the young person who still is two-years—within two years of menarche usually about 15 is the mean age of menarche—is about the age of twelve and a half in this country today.

* * * *

Q You spoke of animal studies when animals become pregnant after the first ovulation. Based on those studies would it be your opinion that there is some likelihood or there is a likelihood that a pregnancy on a young adolescent may affect her future physical growth, notwithstanding the fact that she does not develop complications or excluding the fact that she may develop complications?

A It would be my opinion that it could very well—it would be my opinion that her growth could very well be impeded by a pregnancy in these early teenage years. I cannot document this from the literature because the work [1350a] has not yet been done, to my knowledge anyway.

* * * *

[1368] Q Dr. Hoffman, you have described the physiological and biological risks both to teenage—to teenagers who are pregnant as well as to infants who are born from teenagers who carry their fetuses to term. Could you now go on and describe the psychological and social problems [1369] associated with adolescent pregnancies and could you include in—any psychological and developmental stages that may be interruped by a pregnancy?

A Certainly in my own estimate, these others are very important issues, but there is perhaps nothing is

as profound as the effect upon an adolescent's life and health as having a baby in her teenage years.

I think we have found this repeatedly to be a very serious problem. First of all, I'd just like to state that—and I hope that we are agreed that there are certain functions of society in raising a child, certain expectancies of a mark of maturity and that the process of adolescence is finalizing this.

I think we view the process of adolescence as having, according to Eric Erikson, who is a recognized expert, a psychiatrist, and—psychologist and developmentalist, the tasks of adolescence is [as] being an emancipation in identity formation.

Emancipation means separating away from home and the capacity to establish a family of one's own in a mature sense and identity formation means a sense of knowing who you are and have you got it all together, and what to do with yourself as a grown-up human being.

I think we would probably all be agreed that the [1370] function of child-bearing in our country is to produce autonomous adults, adults who are capable of acting maturely, raising a family responsibly, of being economically independent and it is this process that is so important.

If an adolescent has a child at 14, 15, 16 there is absolutely no way she is going to be able to complete her development or our goals for her as a mature individual. It is very similar as if when a baby was going to learn to walk, you put a—I'm being a little facetious, if I may—you put a 20-pound weight on his head so he never learns to sit up. There's no way that baby is going to ultimately learn to sit up if he's never allowed to. And that if a person is forced into being an adult at a time when they are not emotionally or developmentally anyways near equipped to be an adult you impede the finalization of the ability to be realized.

So, I think this is my own major argument for stating that in a sense all pregnancies in adolescents are life-endangering because they endanger the fulfillment of that

maturational developmental sense and as a pediatrician is what I am committed to.

* * * *

[1377] Q Could you explain some of the emotional and mental problems that occur with adolescent women who have an unwanted pregnancy?

A Experientially one sees a host of serious emotional problems that occur, primarily depression.

The issue of depression is very profound. This is recognized by experts in the field of suicide, that there is a significant correlation with suicide in adolescents.

I can cite Joseph Techer, Professor of Psychiatry at the University of Southern California.

* * * *

A Dr. Techer is recognized as an expert in the issue of adolescent attempted suicides and this references from a chapter he wrote in a book called "Current Issues [1378] in Adolescent Psychiatry," edited by Joseph Scholar, M.D. and published in 1973.

Take either statistic specifically that a teenage romance is one of the common circumstances—I'm paraphrasing—precipitating a suicidal attempt in an adolescent and most commonly an adolescent female age 17 with an anteceding history of a disorganized family.

That of the suicide attempters engaged in serious romance, which were one-third of all suicide attempters, the suicide attempt occurred at the break-up of this romance in the terminal stages of it and of these youngsters, 22 percent roughly one in four, were all suicide attempters.

This is statistics built on statistics built on statistics, but we see and recognize the association with depression and frequent suicide attempts in girls who are pregnant.

I would not say—

Q Excuse me, Doctor. Are you referring to page 136?

A Correct.

Q The statement that 22 percent of all suicide attempting girls compared to zero percent of controlled

girls were either pregnant or believed themselves to be pregnant as a result of their romance?

* * * *

[1384] A Many of the pregnancies that I worked with in the pre-1970 era were unwanted pregnancies and one saw a great exaggeration of the basic, fundamental conflict.

I think it is fair to say that any woman, even a teenage female, has an instinctive biological relationship of a product of her own body.

If it is unwanted, what happens when they see their whole life shattered, that they have to drop out of school, because the schools are very punitive, that they're not able to perceive how they will be able to get through fulfilling their own life's dreams.

It adds a lot more in the way of hostility. Ambivalence. Depression over the rearing of the child and having to be responsible for it.

One might say "Why not have all of these youngsters adopted?"

Our social milieu is such that it almost is becoming as unacceptable to give up your child for adoption as it used to be to not do so. 95 percent of babies born to teenage women are retained within the family today.

* * * *

[1403] Q Suppose the standards under Hyde were medically necessary? This is a term you are familiar with; is that correct?

A Yes.

Q Would you feel you needed a guideline there?

A No. Because that's my skill, my art, my training. I have been practicing medicine for over 20 years. I hope that I will be able to define what is medically necessary. And, indeed, it is merely impossible to come up with a laundry list of the circumstances because each individual is [1404] different. And for any laundry list I have seen, I can up with ten exceptions. It really places constraint on the practice of medicine, with medical care which really the Government should never interfere with and has really no jurisdiction in terms of defining what

the standards of practice shall be.

Q Are you telling us that you are more comfortable with the medically necessary standards because to you medically necessary is a term of art in the medical profession?

A Art and judgment and science, and reason and rational. It allows to me the flexibility given all of the factors. And that's what really diagnosis management is. It is taking all of the factors relative to the biological, emotional, social, health, circumstances, age, developmental status, laboratory data and putting them together. It is really one of the most fantastic things about medicine and the art of it. It's a gigantic jigsaw puzzle. You can't program a gigantic jigsaw puzzle where you don't know what form they are going to take before you receive them.

[1405] Q So what you are suggesting, I take it, is that the Government should not regulate this area at all? It is incapable of Government regulation.

A I can't see how it can possibly be capable of covering all of the circumstances and the issues in general. I feel very strongly that abortions in adolescents should be—should remain medically necessary subject to the physician and the patient and that it should be stipulated no more than that.

* * * *

[Dr. Seymour Romney:]

[1053] Q Dr. Romney, the Supreme Court has defined a medically necessary abortion as follows in *Doe* v. *Bolton*:

> "A professional judgment that may be exercised in the light of all factors, physical, emotional, psychological, familial and woman's age relevant to the well-being of the patient."

[1054] Do you agree with this definition of medically necessary as pertaining to an abortion?

A I thing it is a good definition. It may not go as far as it should go, I think that medically necessary in terms of relating that to good patient care involves a

total comprehensive evaluation of a patient's circumstances which would include some insight into her cultural background and her ability to understand, initiate and carry out medical advice, medical therapy. All of those are important considerations.

Q Is medically necessary a generally accepted standard for medical care or for prescribing certain forms of medical treatment?

A It is a general standard, it need not necessarily be specifically orientated in any particular case, but in terms of a general consideration I would say yes.

* * * *

[1058] Q Can you give us any examples or potential or possible complications that would arise and go undetected if a woman did not have good motivation during her pregnancy?

A Well, I guess a classic example would be to discuss a woman who had organic heart disease, where a decision might have to be made early in that pregnancy whether the pregnancy should be terminated or not. If she was motivated and said she would follow instructions and arrive on given ante-natal appointments, and you knew and felt that [1059] you were dealing with a reliable person, it is possible that with good medical care she could handle that pregnancy and maybe produce a healthy newborn child. If on the other hand she was poorly motivated, was uncooperative, didn't adhere to a regimen of low salt, adequate amounts of rest, periodic checkups, perhaps antibiotics to protect her microvalves from developing complications, then the only time that you might see that woman is when she was admitted into the hospital, or in failure or in trouble, or in a severe infection. And this is the direct reflection of whether or not in actual fact you are dealing with a cooperative, motivated patient or someone who is involved in an indifferent experience.

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[1068] THE COURT: And the store of knowledge and the bases of diagnosis is ever more exact, isn't that right?

THE WITNESS: Right. But the problem is, if you—if you try to evaluate any one particular patient at any—in any particular setting, and then were to try to interpret that data against the statistical background which might form the basis for a judgment as to whether the life was endangered or not, I don't think—I think the individual would lose out in that evaluation. You could not do that with any degree of certainty.

* * * *

[1076] A I think good medical practice would be to try and anticipate and avoid and set up a basis for even preventing difficulties from developing so—

Q Would you be able to do that under the Hyde Amendment standard?

A You mean in relation to pregnancy?

Q Right.

A In certain situations—I don't think the Hyde Amendment is going to help me in any manner or form because my responsibility as far as pregnancy is concerned is to try and get all the hard data that I can at the earliest possible time and to make a judgment whether this woman could safely go through pregnancy or not.

[1077] If we are dealing with marginal situations with the disease and the data or—is less than certain, delay becomes a factor that we would like to avoid. I think it highly desirable that we avoid delay because it would only result in more complications and more difficulty.

Q Are you saying under the Hyde Amendment you predict there will be more delay in addition on a woman when she comes for abortion as to whether or not her pregnancy is life endangering?

A I think that will occur with a good number of women.

* * * *

[1113] A Well, I'm concerned about the Hyde Amendment because in its current form, and as the Department of Justice has suggested, it will possibly administer the Hyde Amendment. The statement, endangering a woman's life as being a sole criteria for allowing Medicaid

payments will not cover—may not cover a very significant proportion of the pregnancies which few physicians will have all the scientific data that they might want if it exists. And I might have to qualify it categorically and say that some of it may not exist in order to make a measure judgment early in pregnancy that a woman's life may be endangered if she carries her pregnancy to term. And I think that will create in the practice of many doctors parenthetically if the Department of Justice is to examine termination certificates and then on the basis of even if it be a carefuly done statistical analysis of where and who and what the indications are about the termination of those pregnancies, I think that, however well that is done, the fact that that will be presumably the systematic method of atempting to analyze whether there is conformity or non-conformity with the Hyde Amendment, I think that will end up being an inhibitory and undesirable influence in the daily practice of Medicaid assignment.

[1114] Q Are you saying, Doctor, that this inhibitory factor will cause some women not to receive abortions that may, in fact, in your personal opinion, be necessary to avert a life-endangering situation?

A I think that—I think the consequence of the Hyde amendment in its current language will mean that the considered judgment of some doctors may be that we need more time in order to make that kind of decision, that they may as a consequence decide to watch a woman alone, and if they spend that much time waiting to obtain other data which may clarify the uncertainty of a decision that possibly couldn't be made early in the pregnancy or should be made early in pregnancy, the consequence of that for the patient may mean further trouble down the line.

* * * *

[1134] Q One other indication of this list is the chronological age of the woman. I notice on number one you have thirty nine years multipara and thirty five years primipara. Could you explan how these two chronological ages possibly would affect a woman's prognosis as to pregnancy?

A I think that those factors are (of) chronological age are traceable to the biological experiences that we have seen with reproductivity performance. In general it is generally recognized that probably the optimal age for reproducing, even in terms of both maternal and fetal performance, is in the twenties;

that a woman who is thirty five years old, thirty five years of age or older, who is venturing into her first pregnancy, that she has more difficulty, greater risk than a twenty two year old young woman who is venturing into her first pregnancy. The thirty five year old woman is termed in obstetrics an elderly primipara.

THE COURT: It sounds too much like primate.

A (Continuing) And the elderness is not meant to be derogatory in terms of chronological age but the elderness is the reflection of the fact that those woman don't handle pregnancies as comfortably and as well and even in terms of performance, biological performance, [1135] as younger women.

Q Can you explain that further, the biologic performance?

A There are complications, occasionally many of them are unpredictable in terms of—well, one of the problems is associated with the woman who is venturing into a first pregnancy in older age groups, her uterus may not grow as satisfactorily as a woman who has younger blood vessels and a younger uterus. The consequence of that may be that that woman may develop a complication in pregnancy termed pregnancy toxemia. Pregnancy toxemia superimposed on a woman who is in the older age group represents a significant risk and that has been a source of concern for obstetricians. Occasionally in that age group for reasons which aren't clear, that is for a woman who has pregnancy toxemia, well, she may develop suddenly and intrauterine death of the fetus, the fetus is not adequately nourished in that the environment and the placenta doesn't sustain fetal growth with the necessary result being that all of a sudden there is loss of fetal heart tones. It is an entity which does occur with some frequency.

[1136] Q Do these women—strike that.

Is there any significant health impairing factor that may occur during delivery with these women?

A If they manage pregnancy to term, in general they will not have the—as efficient a uterine action labor that younger women will have. That results periodically in the decision that they might be delivered by caesarian section. And this is a—this is a reality which moves into obstetrical thinking to the extent that given a woman who is arrived at age 35 with no previous children, and who is determined to see that pregnancy through, the obstetrician, if he finds himself in a situation where labor is not proceeding satisfactorily, he will probably make the decision to terminate that labor my caesarian section. A surgical termination to a delivery carries with it greater risk than normal delivery.

Q Dr. Romney, if you had a 40-year-old patient who was pregnant for the first time and who strongly did not want to carry that pregnancy, would you personally certify an abortion under the Hyde Amendment standard?

A I personally would. I don't know whether all my colleagues would.

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[3971a] MS. BENSHOOT: Right. '77 rider.

Q —which states, "When such rape or incest has been promptly reported to a law enforcement agency or public health service." Dr. Romney, if this "promptly reported" is interpreted to be sixty days, I would like to ask you how many women in the Medicaid population, in your experience, are aware of their pregnancy within sixty days of sexual intercourse?

A I can't answer that question in the sense of—I can give you some general impressions.

[3972) Q Yes.

A I can't bring it down to an individual patient determination. I have some very real impressions about that problem.

Q Are those impressions based on your thirty-odd years of experience?

A Yes.

Q Could you give us those impressions?

A I think—

Q Or opinions?

A I think— One of the realities of thirty years of experience in talking to, I would say, a wide spectrum of women of a variety of social-economic classes, I think one of the things that appalls me is the reality that women know so little about their reproductive system. It's amazing to talk to women and ask them about ovulation, how long an egg may survive physiologically or when they think they can become pregnant.

* * * *

[3973] It allows one to seriously wonder in a group of socio-economically deprived ones who probably have not had elementary courses in biology or desire to under what constitutes normal physiology—and I am not sure that statement in the law at a practical level will help or will result in many women receiving medical care as allowed by law.

Q Do you feel that the majority of poor women are aware of their pregnancies within sixty days of intercourse or are aware that they're pregnant, in your experience?

A That's a very tough question. I couldn't—I don't think I can quantitate that. I think that there are—I would hazard a guess—better than fifty percent. I would hazard a guess better than fifty percent of most women, when they skip one period don't think they are pregnant.

Q Do you think that even a higher percent of women in the lower socio-economic group are ignorant of the fact that pregnancy may be a possibility?

A I believe that on the basis of what I've just told you.

[3974] Q Going on to the same population of women, what about for children under the age of fifteen, let's say, sir? Do you feel that these children would be aware that they are pregnant within sixty days to a greater or lesser extent than the older women or the population in general?

A I am sure they wouldn't be. I think there's almost a tragic aspect to that statement, because most young

adolescent females going through the menarche characteristically have irregular periods. Many may not start menstruating until age fourteen-fifteen or thereabouts. Even if they start menstruating, we know physiologically that they have irregular periods, unpredictable in nature, and it takes several years until they physiologically settle down and have some degree of regularity.

I would say there's a very strong possibility that many such young people would have no way of knowing, might never even conjure up the thought that they are pregnant, to say nothing about the fact that in the circumstance that we're talking about here, rape and incest, elements such as fear, perhaps guilt, all might come into this problem. It would be a very difficult problem.

Q Come into it, and have what effect?

[3975] A The effect would be that they would delay going to some physician or clinic for help.

Q In your experience, do children under the age of fifteen generally seek out a pregnancy diagnosis at a later stage than women who are older than that, taken the same socio-economic group?

A I think you can disregard the socio-economic group. I would say teenagers and young adolescents, in general, if they come for prenatal care, they're normally directed there by either a social agency or a domineering parent, and then the child comes for care.

Q Would it be your testimony that this is generally at a later stage, the diagnosis of pregnancy, than for someone over teenage—

A Frequently at a later stage.

Q At what point in pregnancy, at how many weeks, would a teenager be able to notice a physical sign that she may be pregnant, as opposed to the physical manifestation of one missed period or delayed period?

A The uterus rises out of the pelvis, becomes an abdominal organ, palpably, so much so that women or patients will frequently say the first time they knew something was going on was when they were taking a shower, a bath, and felt something in the lower abdomen. That is [3976] generally beyond twelve weeks of gestation.

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EXCERPTS FROM RELIGIOUS TRANSCRIPT

[Rabbi David Feldman:]

[1858] Q What is the relevance, if any, Rabbi Feldman, of scientific or biological evidence about the development of the fetus to the Jewish law on abortion and the status of the fetus?

A Well, probably there is no relevance because what we are reduced to here is a metaphysical determination. [1859] I don't think it is for a biological or medical expert to tell us when life becomes human. A biologist can tell us when chemistry, protoplasm, an organism becomes life, but when that life passes from potential human life to human life has got to be a metaphysical, religious, philosophic determination rather than a medical, biological one or even a legal one.

* * * *

[Mr. Wogaman:]

[1967] Q What is the importance of the role of ritual in the Protestant faith?

A Well, I suppose that one might say that ritual—would say is a means to the end, the end of the celebration of God, goodness and the end—that is the experience of—ritual constitutes the form. There is always certain danger that ritual means to turn into the end but in point of fact in Protestant theology ritual is not regarded as the crucial thing in defining religious experience.

* * * *

[1968] Q What are the essential aspects of the practice of the Protestant faith?

A I prefer to say Protestant version of the Christian faith, and on all these things there are not great differences. There are some differences between Catholics and Protestants and between Protestants and Protestants. It seems to me the two really crucial things are first our worship of God, our celebration of the goodness of God, and secondly our organizing our lives in accordance with

our experience of faith in God. Those two things go intimately together; without faith and worship on one hand there cannot be true morality, true organization of one's life in the basis of faith. On the other hand without morality there cannot be true expression of worship. Probably the Old Testament says it best: What does the law require of thee is not the ceremonies. These are nice parts of life but "to do justly, to love mercy and walk humbly with your God."

Q Does the fulfillment of responsibilities flow out of worship include making responsible decision making?

A I would say absolutely yes. It is important in our relationship to God that we respond in terms of God's [1969] gift of love to us and a part of our response to God then must be to participate with God in the creation of new life under such conditions that new life can fulfill [God's] intention for new life.

Q. If you had to weigh ritual worship and responsible decision making, on a scale of values on the testimony of your religion, how would you compare their importance?

A It would be worship and responsible decision making in a tie for first place and both belonging initimately together and ritual in the third place.

* * * *

[1970] Q Would it interfere with the practice of your religion for the Government to make it difficult for a person [1971] to make a decision to have an abortion?

A Yes, it would, because if the possibility of an abortion in the early stages of pregnancy is a possible response, free response of a human being who is also a child of God to a dilemma in which the birth of a child might potentially be contrary to God's purposes then the denial of a freedom or the impending of a freedom is an impeding of that person's exercise of what I consider to be her real duty.

She responds to her relationship to God.

Q Is the impediment of this decision making as well as the outright prohibition of acting on the decision also an interference with the process?

A I think I have said so. These are things that can be put on a continuum of seriousness. Some types of impediments are minor, some more serious; but a real impediment to the exercise of that person's responsibility of a responsible parenthood would appear to me to be directly contrary to our understanding of God's purposes.

Q Are you familiar with the Hyde Amendment?

A Generally so.

Q Does the Hyde amendment which restricts funding for abortion, for pregnancies which would endanger the life of a mother interfere with the practice of your faith?

[1972] A It seems to me obvious that it does because the major effect of the Hyde amendment, as I understand it, is in the categories of mothers who are very poor and who must receive their basic income through public welfare. These are people who cannot afford these things which other people in our society can afford. If support for the one medical procedure of abortion is denied or withheld then that person's action would seem to me to be obviously undermined. I suppose theoretically a person could somehow bring together the resources to do this, but it would be a very grave impediment.

Now, the amount of money would not be a grave impediment [to most people] in our society; [but] to poor people it would be. Of course, we are as concerned with poor people, perhaps even more so, as we are of persons of greater means.

Q If the Hyde amendment were expanded to also allow funding in cases where the woman would suffer serious health damage if not aborted, would these restrictions on funding still interfere with the practice of your religion?

A Yes. I have already indicated that the concern here is the whole fabric of the conditions of human existence, and if this is limited only to the case of risk to the health of the mother it would be overlooking a number of other considerations which are also important, that is, I think the [1973] churches out of whose tradition I speak most directly are deeply concerned that

we are not bringing direct or indirect limitations or coercion of any sort on mothers. This should be the decision of the woman. She is the one who should be able to respond out of her faith to the moral dilemma which might be created by an unwanted pregnancy; in our opinion it is not the proper place for the option of the state.

Q If the Hyde amendment were expanded also to allow funding where the fetus would suffer serious health damage, would that too conflict with the practice of your religion?

A Well, again you have added one more possible condition, and there are again others.

Q Is your view that restrictions like those contained in the Hyde amendment interfere with the practice of religion widely shared?

THE COURT: Is the view he just expressed a widely shared view.

A Yes; and I learn each day how much more widely shared it is. In speaking out of background of many relationships with fellow theologians and with church leaders and others who are concerned about this, there really is a grave feeling that the Hyde amendment is a serious compromising of the rights of women as we understand them through our [1974] christian faith.

* * * *

[1988] Q You stated that what is relevant for you is the dawning of awareness; the Supreme Court has talked in terms of viability. Are these two separate concepts to you?

A Yes, they are, because one of them is concerned with the intrinsic reality of the emerging spiritual nature of the new life and the other is concerned with the [1989] necessary life support systems, biologically, needed to sustain the new life in being.

Q So it is simply coincidental that viability, which is a Supreme Court framework and the dawning of human awareness, which is your framework, occur at about the same place?

A That is correct. In one sense it is just coincidental and in another sense it isn't. One might expect viability to occur at that point in fetal development, where those criteria that seem important to me concerning personhood would also be more developed.

Q If there were advances in biological technology that moved the time of viability back in the pregnancy to a very early time, would you then—would that change your views about the time when this crucial phenomenon of awareness occurred?

A Yes. Such as for example, the conjectured testtube babies; no, it would not.

Q You would still hold that it is somewhere around five months where there is an awareness?

A Yes, and indeed to sharpen the matter, if you have the testtube baby developed, one might legitimately raise the question at this point, are conditions such that the birth of this child currently in fetal development in the testtube are conditions which are sure that that life can [1990] be sustained in relationship to what we think to be most important about life.

Q So how do you view the usefulness of science in making the determination of when human personhood begins?

A Well, I think science first of all, what is science; science is the orderly disciplined examination of factual data in areas pertinent to a particular science's discipline. It is of inestimable help to us in our understanding of perceptions of the physical world. Science, however, does not create value.

If I might cite as a kind of an illustration of the point that I would make here, Congressman Hyde in an article which appeared in the Human Life Review this last summer, made a statement about biology and science.

Q Could I have that marked for identification?

A Yes.

THE COURT CLERK: Marked for identification as Plaintiff's Exhibit 34.

Q Excuse me; you were in the middle of something?

A Yes. Well, I just wanted to offer it as an illustration of the problem of thinking in purely biological

or scientific terms. He is, at this point in the article, speaking about the status of the fetus and why, in his judgment, the fetus ought to be regarded as fully human [1991] and in the value sense, from the very moment of conception. He says "theology does not say it is a human being, biology says who is a human being. It is biology that says thou shalt not kill a fetus; that is part of the tradition of the criminal court described by individuals in every civilized nation, and that is what biology says, let's quit kidding ourselves; this is human life." And then the statement, "the old argument that we who oppose abortion are trying to impose our concepts on other people is totally absurd, theology does not annihilate me, biology does. That is a human life, that is not a potential life, it is a human life with potential."

Well, there is a certain special appeal to that, but what he is saying in those words, is that we can know through factual description what the value of a particular entity is,

* * * *

Now, I think I speak for virtually all theologicans and [1992] ethicists at this point in saying a descriptive science cannot establish the value of an entity. In order to establish the value of an entity you have to establish its relationship to ultimate reality that is there, it must be a source of value. To use the language of H. Richard Neibuhr, a theologian from Yale, the center of value is what gives to each of our relative values their final standing. In this case, surely the center of Congressman Hyde's value is not biology.

* * * *

[1996] Q Would you compare your view that conscious decision making is important for your faith with the view held by the Roman Catholic Church on the issue of abortion?

A My understanding of the Roman Catholic view is that abortion is considered to be invariably, or nearly invariably, wrong, and that the hierarchy of that church has taught that for one to be a faithful member of the

Roman Catholic Church, one must not exercise that procedure except under certain narrowly defined exceptions.

* * * *

The Protestant position, generally, as I have described it, and with the exception of course, in the large number of Protestant churches there are a variety of views, but the general position that we have been dealing with is rather that the responsibility for the decision of parenthood, [1997] including even the question of abortion is proper to the religious conscience of the person affected. And, it may well be a proper religious duty of the woman affected under certain circumstances to seek an abortion.

I suppose in all of the whole landscape of ecumenical considerations, of moral issues, this is the one issue of greatest division today on so many areas.

* * * *

[1999] Q Could you explain the religious views which you feel Congress adopted in adopting the Hyde Amendment?

A I think it adopted the view for all intents and purposes that early fetal life has the same value as all other human life, and therefore, presupposing a doctrine [2000] of the relationship between prenatal life and the source of all being, as the source of value.

* * * *

[2001] Q What is the affect of attributing morality to the view underlying the Hyde Amendment?

A Well, I'm concerned as a Christian theologican and member of my denomination, I'm concerned at two points with the effect that it can have. One of them is the effect it has upon the woman in question, who as we have said already, is inhibited, impeded in the potential exercise of her religious responsibility. I am also concerned about the effect this has upon the inter-religious climate and the social effects in our society. This has the effect of pitting religious groups against religious groups, with one group attempting to gain the power of the State in coercing the freedom of members of another religious group.

It seems to me already one can see effects of that including the public discourse and inter-religious discourse in our society. This goes back to the period of 1976, and I guess even earlier than when the Hyde Amendment was first discussed, and then as it was proposed and adopted. There [2002] was a gathering storm of a controversy among, a conflict among religious groups in this country, which was noted in newspapers at the time as a danger, a risk. Then when the Supreme Court—I don't mean the Supreme Court, I guess it was in this Court-enjoined the fulfillment of the effect of the Hyde Amendment, that put the conflict aside and for a period of time there was none. This sense of acrimony and conflict, it was more generally understood that the dialog would go on about the religious question, and it would go on among scholars and people in the religious sphere and the public sphere.

Now, one thing did occur during the period of 1976, which, while not directly related to the Hyde Amendment, would illustrate the dangers of inter-religious conflict and that is, when the whole question of abortion was injected into the Presidential campaign of 1976 by the Catholic bishops, through their interviews of President Ford and Governor Carter, implying in the public record that the one issue of the campaign was the issue of abortions. I don't happen to believe that the Catholic bishops think of abortion as the only interest of importance, I know that they have wide interests, but in the public spheres and in the spheres of inter-relationships, that is what emerged.

* * * *

[2003] Now, with the latest round on the Hyde Amendment now being discussed in Congress, and of course the conflict between House and Senate versions and all that, I see emerging a very strong backlash to use that word among the Protestant religious leaders and theologians, who are [2004] deeply concerned that the power of the State will be employed to give advantage to the point of view which they do not accept and which, in fact, is contrary to their views.

Now, people who are Protestants and who take the kind of views that I have been articulating do not think Catholics or others should be compelled to have abortions. We don't think anybody should be compelled to have abortions. We are speaking of the State neutrality in the area, allowing this to be an area in which people will be encouraged to follow the practices of their own religion, and we say that the Hyde Amendment is a direct kind of threat to that.

* * * *

[2037] Q That would be where a hysterectomy was required and the fetus was in utero?

A Yes, because it's indirect killing and not direct killing. That kind of a distinction in a protestant theological frame of reference is virtually meaningless, but [2038] in the Catholic context it becomes a very important distinction.

* * * *

[2074] Q Congress values the conceptus and values it as you are saying almost substantially as if it had been born, as if it were an after born child. Do you feel that irrational?

A Yes.

Q Why?

A You used the word irrational. I would say it's in that area where pure irrationality is not available to use. If by pure rationality we move from logical evidence [2075] to logical conclusions, it's in the area where a religious position is required to fill in the gap, so to speak, and indicate where the value lies. Now, in that sense I wouldn't want to use the term rational or irrational. I would say it moves beyond rationality on taking a position on religious disputes in our society.

* * * *

[Rev. William B. Smith:]

[2131] Q Doctor Smith, we'll take it without the exception. Let's say, hypothetically of course, that the secular law said a pregnant woman can have only an abortion as treatment for pregnancy and this woman

were Catholic. Would that constitute an interference with her freedom to exercise her religion?

* * * *

A But I think it is an absurd example. I mean childbirth is a treatment for pregnancy.

* * * *

Q But you would, of course, oppose a law like that, wouldn't you?

A I think I would, yes. I'm sure I would.

Q Now, let's say that this hypothetical woman is Catholic and she is poor, she has no money and she lives in a community which is served only by a public hospital and there is no Catholic hospital in the vicinity [2132] or to which she can go, and that public hospital has a policy to perform only abortions as a means for treating pregnancy, they refused to do childbirth, would that constitute an interference with the exercise of her religion?

A It would seem to, yes, however hypothetical.

[2133] Q And suppose that this poor woman is dependent upon Medicaid reimbursement in order to obtain medical care.

A Yes.

Q For her pregnancy, and that the Medicaid program will only give you an abortion. Will only pay for an abortion as a treatment for your pregnancy. Would that, refusal to fund childbirth, constitute an interference with her freedom to exercise her religion?

A You lost me. There are too many ifs in there.

* * * *

[2135] Q I am asking you to accept the hypothetical.

THE COURT: If there is no other service available except this Medicaid hospital, it does not assist in normal births and refuses to do anything except abortions, and she has no other available resource that is relevant to her pregnancy. She's calling it medical treatment.

MS. COPELON: Thank you.

A I would certainly—that would certainly [2136] limit the woman.

THE COURT: Limit the woman?

THE WITNESS: It would limit the woman's choices apparently. There is no choice.

Q And that would violate her—would interfere with her ability to exercise her religious beliefs?

A It would seem to.

* * * *

[Miss Mary Peek:]

[67] Q Can you tell us what some of the reactions were that followed?

Were there calls that you received? If so, tell us what the people said to you?

A Well, there were several. Some of them stand out in my mind. I almost immediately got a call from a woman who said, "I want you to know that I just read the Bulletin, that you favor abortion on demand up to twenty weeks. I have been out and I have torn the campaign sign off my yard, and when my husband gets home, I will take the bumper sticker off his car and we will not support you."

I expressed regret. I said, "I don't understand why you would be surprised. I stated in my literature card that I was in favor of reforming abortion laws."

* * * *

[68] The second call—we had a very large mailing ready to go out to the community and one of the women who gathered about a dozen signatures, one of the women who had gathered those signatures was a Catholic woman, and did get some names of her Catholic friends. Of course there were lots of Democratic names on there. This woman called almost hysterically on the phone and said, "I can't have my name on that leter. If you send out that mailing with my name on it, my life in this community will be ruined. You have got to stop that letter."

Well, I was absolutely stunned and I said, "that it has been run off, the envelopes are all typed, it is all ready to go, and there several hundred of them."

She said, "well I will do something, I will sue you. I will deny that I ever said that you could use my name."

I said, "we certainly do not want to cause you those kinds of problems." I called my campaign manager and said, "don't send out that mailing."

Q In the course of that conversation, did she tell you what she meant by "my life in this community would be ruined"?

A It was clear, since she was obviously very closely knit to the Catholic community in this particular one [69] parish where I had considerable support. I think she felt that she would come in for so much criticism for supporting me that she would not be able to withstand the social pressure that it would bear and it would be very difficult for her. That was the beginning of several calls I had. A couple of very kindly people called and said, "couldn't you change your position? Is it so important in view of everything else that you are—do you really feel that you have to stand on that?"

I said that this is a position that I came to after a great deal of thought and I am not going to abandon it for political expediency, because I know there are times when women need that help.

Q What was your knowledge of that based on?

A Well, mainly my work as a teacher. I have been active in many civic and community affairs over the years, and my husband is a clinical psychologist, and privy to the kind of problems that people bring to professionals in the field, and I just over the years slowly moved in the direction of thinking that was a problem that we had to take care of. We did have to provide help for women.

* * * *

[71] Q Did people call you names?

A Yes.

One or two people, after we moved towards the primary, did come up and say, "I won't vote for a murderer. I won't vote for a baby killer" or "your abortion stand doesn't permit me to vote for you." I remember one Saturday afternoon standing there and a woman came by with her three little children and as she came out of the drugstore, she saw me and just as if she saw some evil beast, gathered her children up and rushed

them down the hall. I realized of course, for some people I was *persona non grata*, because I was not modifying my abortion stand.

Q What was your reaction to this?

A I was really shocked. In Minnesota for many years we have had a reputation for openness, for tolerance, for being a very democratic state—small D. I am not talking about the Democratic party, but the democratic process. I was shocked. I found my children, who were then fifteen and seventeen, being told in school that their mother was a murderer and a baby killer, which was a little [72] unsettling for them, but they were old enough to deal with it. It gives you an example of the kind of miasma of fear and hatred that could exist and I couldn't believe it.

* * * *

[78] Q You described it as poisoning the political process in Minnesota today. Could you explain to the Court a little bit more what you mean by that?

A Well, I think the fact that very often now, * * * has—with varying impacts, almost all candidates are subjected to questionnaires on the abortion issue, whether it is somebody running on the school board or city council, whatever. And there is a quality in dealing with this issue that is lacking in many other issues, even kind of explosive issues. There is a sort of feel about this that is very disturbing.

Now, it seems to me that in Minnesota we really do have overtones of a holy war, a holy crusade, and I think we are on the brink of stirring up sectarian strife.

Q * * * I take it that in Minnesota as elsewhere in the country there was a great deal of very intense division about the war in Vietnam.

A Yes, there certainly was.

Q And you were involved in that?

A Because we had two Minnesota people vying for President over the issue.

Q And would you say that the quality of the character of the division and the way it is expressed today [79] is different from that which was expressed as to the positions on the War in Vietnam?

A Well, the positions on the War in Vietnam were extremely strong, but they had a slightly different quality. I think there is something about injecting religious feeling into something, and I do think that that has been injected into the abortion issue.

I think if you look back over history, if you call up religious strife, you really let the monster out of the cage. And I think there is beginning to be, and there has been in many areas, the religious zeal kind of thing that I don't think the Vietnam War issue had.

Q Is the strife around the abortion issue greater or less than the issue of aid to parochial schools, which I understand is also a substantial issue in Minnesota?

A Oh, abortion is a much more explosive issue.

* * * *

[128] MR. WASHBURN: We have to get the witness's view, or else she has no purpose of being here.

THE COURT: She came here to tell us of her experience, not her philosophy.

THE WITNESS: Or my theology and the kind of [129] questions you have been directing to me in this courtroom are exactly the kind of badgering questions that are levelled against everyone who advocates freedom of choice; and they are made to seem to condone murders in Auschwitz, the death penalty, euthanasia and all those kinds of things when we are not talking about that at all.

* * * *

What we are witnessing here this morning is exactly what is going on all over this country, where people are being badgered and being made to feel they are somehow monstrous if they don't agree with [130] the view that says the Supreme Court decision should be overthrown.

* * * *

[131] Q What do you mean by coerced?

A I think it was made so difficult, so socially hazardous to support a reform position at that time that many of those people ultimately became unable to support me, or to work enthusiastically for me.

Q You mean, there was a community response or institutional reprisal by the church?

A There doesn't have to be an organized, official reprisal. We all know that one of the great punishments that is meted out is shunning, or people being sent to coventry.

When there is social disapprobation, where other people in your church don't speak to you or turn away when you are at the coffee hour, that is a very painful experience. And it is my position that the church had so generated feeling on this issue that people who did not support the [132] church position and did not follow their guidance, with respect to candidates, were liable to that kind of behavior on the part of other people in the parish or they feared that they would be. But the climate was such that they would be and indeed, some of them received phone calls about it, saying, "How can you support that woman?"

* * * *

[Dr. James A. Wood, Jr.:]

[618] Q Would you describe that as a value judgment about ultimate values?

A Yes, I think really [it is]—I am using the word "Conscience" here. I don't have any need to formulate [conscience here], but I would like to pick it up for a moment.

In the earl[ier] days, you see, conscience was far more important than religion.

When John Locke was asked, aren't you the author of Liberty of Conscience, he said, categorically, "No, the Baptists are."

John Milton, a Baptist, this was his great emphasis.

"Conscience" comes from con-scire "To know"—to be morally aware.

From that moral awareness we talk about the liberty of conscience to mean the exercise of one's moral awareness.

Frankly, we view that clause of the first amendment; "the free exercise of religion," in the context of the exer-

cise of one's conscience. It has never meant for example, simply, freedom of religion, but the right to freedom from religion and One's citizenship is to be quite separate from one's religious identity or membership.

So, when we come to an issue such as abortion we see [619] it as not only the right of decision making, but a moral decision. It comes out of some sense of moral awareness of what I should do or we should do in the case of husband and wife, or whoever else is involved in that decision, or the woman alone.

Nonetheless, it is decision making as to what ought to take place and we submit that the very fact that it is made in that context it is a moral decision.

It takes on real religious meaning because it is being absolutized as an ultimate, a supreme obligation.

Q Bringing a life into the world is an ultimate—

A Has an ultimate character of its own. That is to bring a life into the world takes on an ultimate character and religion is a matter of ultimate concern.

Q Would you compare the decision involved in the question of abortion from a Baptist perspective to the decision that involves conscientious objection to bearing arms in war?

A I think the two are excellent as analogies: one with the other or to reinforce the other or vice-versa.

We as Baptists rejoiced when the Supreme Court in the Seeger case recognized that acting out of conscience does not have to be located in a religious community; that seventy eight million Americans are not members of any [620] religious community but they have a conscience.

If that set of value norms, moral norms—and Emanuel Kant defined religion as making these value norms as if they were divine commands. When one does that, saying, I cannot bear arms, that is the exercise of conscience.

So, the Supreme Court, we think, rightly said, it doesn't have to be a Supreme being but when a way of thinking about war, for example, functions for you in that ultimate sense as Supreme authority for your de-

cision, we agree with that and I do suggest that abortion has a great deal that is quite analagous to that.

Q Would you explain that?

A I think in the case also of abortion we are working through the decision making process about a moral judgment, a moral judgment that indeed medical science cannot make.

Certainly, in the first trimester or second trimester, certainly as you proceed with the whole question of stages of development, I would certainly say, wherever this point is, five or six months after the moment of conception that * * * there is a value judgment very strongly involved and even to the very end of the pregnancy there is an exercise of a value judgment.

I have been interested—so often we hear and as I [62] have heard today, the concentration virtually on the fetus,—that we recognize in this particular issue there is of course the sanctity of another human life and it is the pregnant woman herself. She must be conceived in terms of the painful process itself that can only be regarded in terms of a decision making process.

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[637] Q Could you tell us what the essence of this resolution is?

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THE WITNESS: I might say the entire resolution prior to the last paragraph was deliberately phrased to affirm the sacredness of life, that Baptists take this very seriously, because the organized opposition, it was felt, was suggesting [638] that, perhaps, as Baptists we're not taking seriously this reverence for life.

All of these are rather familiar within a Christian context about the sacredness of life. The real point of the resolution is in the last paragraph which is the one I would like respectfully to suggest be the one that has any historical significance at all or of interest to the Court itself here.

"Be it further resolved that we also affirm our conviction about the limited role of government in dealing with matters relating to abortion."

* * * *

A I think it's the way we want to say it because, again, there is no theological position on abortion. We are not people who are suggesting that it is an act even we want morally to condone, let alone to espouse. It is not an advocacy of abortion as such. It is, again, the exercise of one's conscience to make that decision for [639] one's self without the intervention of civil authority to do so.

For that reason you'll notice along with limited government, it finishes with words to the effect of, "We support the right of women for the full range of medical services."

And we mean by that, both, of course, the full range of the woman and the fetus for medical services, whatever that may be.

Q Consistent with the choice—

A The choice to be made, yes.

* * * *

[645] Did you indicate Doctor, that the view that the fetus was human from the very beginning was regarded as itself a value judgment to be made in conscience?

THE WITNESS: Yes.

THE COURT: And not as a biological—

THE WITNESS: Not as a biological fact, no.

In other words, there are people whom I actually know as ministers and laypersons who vigorously support the publicpolicy view of the Baptists in this [646] regard to the Supreme Court decisions who, at the same time, morally and theologically hold to a view that for them abortion is completely out of the question.

* * * *

That would not however be, I take it, from what you earlier said, something that they would seek to instruct their congregations that they should, in conscience, share with them.

THE WITNESS: I think they would feel perfectly free, your Honor, to see it as something even they could include in religion and moral education, but they could not—it could not mean calling upon Government and civil authority—

THE COURT: I am clear about that, but is it a view that they would feel free as Baptist ministers to try to persuade their congregations to share and act on?

THE WITNESS: Yes, in the sense that one is no less a Baptist for holding that point of view.

One's credential as a Baptist minister would in no way be eroded or jeopardized by affirming that theological point of view.

* * * *

[647] Q Are these letters, examples of the kinds of letters you receive taking issue with position of the Baptist Joint Committee?

A Yes. I would have to spend some time, I think, being completely categorical with this, but if I may make a general statement because it's based on honest reflection and at the moment I think I have never received—and I have received a number of these letters—and all of these letters expressed opposition in the manner that these do; verses of scriptures that are cited, religious statements cited and it has to do with their feeling intensely the immorality of abortion and therefore their inability to support the Baptist body or Joint Committee on this.

[648] They see abortion as immoral, and therefore they would be opposed to a policy.

Q You used the words "Moral" and "Immoral" and "Value" in describing the personal beliefs of some Baptists.

Would you describe those beliefs are religiously based or based upon an interpretation of duties such as you have described to be religious or within the realm of conscience?

A I do and not only for Baptists, but I would do this with regard to all persons. Whether they think of themselves as religious or not is not the real point.

Religion has a functional definition and once we talk about moral norms and values they inherently are religious in character.

Religion is a sense of the sacred. Religion is a sense of the ultimate concern. Religion has to do with moral

imperatives which one regards, if he is theistic in his beliefs, as devine commands, whether one is agnostic or not in a formal sense.

* * * *

[649] I read—of course, virtually all the Baptist publications coming across my desk—and I must confess that it has been very interesting to me but I never read statements of which I have any recollection from any Baptist in opposition to abortion who did not put it in very religious terms.

* * * *

[655] Q Congressman Hyde talks in terms of there being biological evidence or it being clear that the fetus is an actual human being from the moment of conception.

Could you compare your understanding of the biology with the view that Congressman Hyde is expressing?

A Well, I don't want in any way to appear disrespectful of the intelligence or integrity of Congressman Hyde in making such a statement and I accept the sincerity as to it, but for any person simply to make the statement that it is biologically evident—as far as I am concerned that is a moral judgment he is making. It is precisely because it is not biologically evident.

I think many of us have serious questions about the way in which biology and science are being used to tell us that the question has been answered. It has not been answered. It is a moral question ultimately.

Q Do you view it as also a religious question when you use the term "Morally"?

A Yes, I do, I do.

It is by the very nature of a functioning definition of religion which is giving ultimate authority and status which has to do with moral norms.

* * * *

[657] Q Now, in terms of the Hyde Amendment, the restrictions of Federal funds on abortions except in limited circumstances, do you also view that as interfering with the right of conscience of women who might not share that religious view?

A Yes, I do. But I think it carries with it a terrible stigma to be imposed on the women of this country; namely, that we have a—we have public funds available for medical services and this Government presumes in an almost arbiter of the morals of the people of this country to be saying, you may have public funds for a vast panoply of services including child delivery services, but if you elect abortion—I see it as not only discriminatory and punitive but also as morally offensive for the Government to enter that arena and place that kind of stigma, not only on poor women by on the citizens of this country and to do it after the Supreme Court spoke as it did after January, 1973.

* * * *

[660] Q Now, are you familiar with the problem of violence erupting around religious controversy?

A Yes, I've been agrieved and disturbed in recent months because of what's happened in Planned Parenthood Operations, clinics, this kind of thing. I must say I realize—I'm speaking with candor here—but that's why I was asked, I presume, to be in this place. I'm very much a part of the ecumenical movement. I'm very much a part of Catholic-Baptist dialogue and by the way, I've attempted to speak to the abortion issue in Catholic dialogue sittings which involve several bishops of the church, but I am disturbed by the absolutist viewpoint that seems to have with it complete intolerance for any of the rest of us in this society. I must say I feel deeply offended and a sense of indignation to be called a murderer by seeing such tags on the bumper stickers of cars.

I think it's outrageous in this society or to be asked "You have no regard for life?" That is a viewpoint that, it seems to me, is of the mentality that is frightening. It is polarization of the worse possible kind.

When we talk about political divisiveness on the parts of religion in this country, we haven't seen it in [661] the history of this country, what we would have, if, indeed, the Right To Life Movement is able to enact into law through abridging the First Amendment. This is a policy for this country. It will be divisive in a way we have ever imagined in the past.

We have many cases where people are killed, churches burned, religious rights, of course, in the streets of American cities. Yes, I am deeply disturbed over that aspect. It's not my concern about the theological and moral absolutism. That's quite another matter, but the unwillingness to tolerate even other people, reasonable people, good people, yes, even Christian people and Jewish people who out of their conscience feel very differently about the abortion issue.

* * * *

Q I have one more question. You described this as potentially more divisive than any other. Do you see a potential divisiveness and I would say, also, violence in a movement which claims religious authority for the proposition that other people are murdering.

A Yes, that's really what, in effect, I was trying to say. I mean to have a movement—it's one thing to talk about, for example—whether public funds should [662] or not be used for church hospitals or parochial schools and so forth. That's a matter of open debate, dialogue. At least, we're not accusing others, even, of being thieves, but this, to say to a woman or to a husband or to anyone who holds that point of view about abortion is a rightful medical service to be available that Government should not prohibit this, that these people, if not actual murderers, they believe in murder, I think, is polarization of the worse possible kind. It's an outrage in this kind of society.

I think it has the seeds not only of violence but the seeds of disintegration. It cannot make for unity, ever, cannot make for reconciliation, but permanent and irreparable division in this society.

* * * *

[680] Q Suppose a woman with nine children who is now pregnant with her tenth decides she is going to have an abortion simply for that reason and that is the only thing she takes into consideration. She doesn't want to have another [681] child at that point in time or perhaps ever again. Is that a religious decision in your view?

A For her it would be, I'm sure.

* * * *

[682] We find people in every conceivable situation in this country. Some people take their lives and situations with the utmost seriousness and some do not and an awful lot are in the middle so I cannot accept—I don't know that this is the time or place—but I cannot accept as a premise that everyone goes through this soul searching, just as I cannot accept the premise that everyone takes their life that seriously.

THE WITNESS: May I comment?

I think that a woman with nine will take seriously the option of ten. She knows something about it.

We have this all up and down the line, the depths of decision making, conscientious objection. I happen to think it fortunate the Government does not have that kind of competency to determine the depth or degree of soul searching, the extent of anguish [683] and pain that persons experience to arrive at that point of decision making and obviously that pregnant woman with an I.Q. of 45 or 50 may be different in the decision making than a woman with an I.Q. of 140. But there is a right to privacy as to the most intimate of all human relationships which must be respected with regard to how far the Government has a right to intervene in the lives of human beings.

* * * *

[713] Q You mentioned the limited role of Government funds and the United States Supreme Court, I think, made this point in some of the cases: If you want Government out of this religious decision of whether or not to bear or abort a child—is Government funding not an entanglement of Government necessarily in that decision just like the funding of parochial schools?

A Yes.

This is what is wrong with the Hyde Amendment: It violates also—not only is it not neutral, but it repre-

sents gross entanglement of institutional Government into the moral and religious values of the people of this Country.

Q But if we repeal all Hyde Amendments and put it back to where it was before any Hyde Amendments, you would still have plenty of Federal funds entangled in the abortion decisions. As a matter of fact, they would be completely funded.

A I fail to see the point of the Government providing for medical services, whether abortion, delivery, tonsilectomy—what is religious about the medical services of abortion? The decision making is, the service is not. [714] It is secular.

Q So, when they are funding abortions as medical services that is a secular act they are funding. It is not like funding parochial schools.

A It is very different, very different.

* * * *

Is there a distinction between the secular acts, the medical procedure and the religiously, perhaps, formative decision of whether or not to participate in that medical procedure?

A Indeed.

Q What I am saying is aren't the funds or not funds of the medical procedure necessarily all entangled in religion or is it only when we cross the point of getting into the decision that we invade that area?

[715] A It is the refusal that becomes the entanglement because it is the act of withholding funds.

* * * *

[745] Q Are you saying his biology is wrong? That's what I though you said but I wasn't sure.

Are you saying he's just in error biologically?

THE COURT: I would prefer—what Dr. Wood said, as I recall, the argument of humanity did not flow as evidence from the biological data.

Q Is that correct?

A It's a value judgment, correct.

* * * *

[Dr. Lillian Lindt:]

[4094] Q Doctor, why did you choose the legislative debate to study?

A I chose it because in dealing with this issue, and having only limited time available, it was important to find something that dealt—it seemed to me—with some of the major issues relating to the ongoing debate which is, obviously, a much larger issue in all of American society, but which is a single individual action.* * * [F]rom a sociological standpoint, and it seemed to me here, that the legislative history was particularly informative because it brings together at a very critical point a wide range of opinions, attitudes, beliefs, concerns that presumably reflect some of the same considerations that are going on in the larger society.

* * * *

[4096] Q Could you tell us what you found in examining this debate?

* * * *

The major themes that I saw running through the debate had to do, first of all, with an issue that was time and time again defined in religious and moral terms. Secondly, [4097] there was also an important issue, and concern over matters of quality of life. Thirdly, but to my mind perhaps a little surprisingly, there was far more limited reference to any biological and scientific and medical preoccupation. There certainly was some, but it did not appear to be, you know, a dominant theme. And last and perhaps it shows my lack of familiarity with congressional legislation, I was rather surprised that since, technically this was a rider on an appropriations bill, there was remarkably little consideration about matters of fiscal policy or economic issues, or broadly, political ones.

So those are, you know, some of the broad themes that go through that. Now, on the dominant ones I will speak to that more precisely.

Perhaps one of the more surprising themes even for a sociologist of religion here was to see how often re-

ligious and moral themes were activated, and they were activated in a number of different ways. First of all, there were quite a large number of references to explicitly religious concepts; references to God, God fearing, God given rights, religion, religious beliefs, religious values, religious convictions, references to the human soul, to immortality, to sin, religious wrongdoing, innocence, forgiveness, sacredness, sanctification, matters of conscience, [4098] matters of prayer. These are all just concepts but as a sociologist of religion, all of these evoke some fairly standard religious references.

In addition there were some things that weren't so much conceptual but actual themes. One of the prevalent ones had to do with the theme of the slaughter of the innocent, an obvious reference to Herod, and the slaughter of, in that case, innocent children. There were several references, for instance, to the biblical injunction, "forgive them for they know not what they do," references to "thou shall not kill"; so these are some of the things, some of the language that certainly is evocative of much of the Judeo-Christian tradition that lies behind it.

In addition, there are some, from a sociological point of view, equally important but perhaps more implicit indicators. For example, when you look at the ways in which the fetus is portrayed here,—the actual conception of the fetus in this debate,—it became clear that in terms of a description of the fetus, the stress was very rarely on the fetus per se; it was much more common, and this was of course particularly true of those taking an anti-abortion stand, to define the fetus as a human being, human life, fellow human, and child, baby, infant, son, daughter, and even Christian. Now, these are still references to the fetus, [4099] and there again, I would simply comment on that, and say the reason I find this surprising is that from one point of view, at least the fetus is a concept that really arises out of a very different body of knowledge and information, namely out of biology and the medical sciences. And, when you deal then with the fetus as a human being, as a human life, it becomes clear that you are dealing with issues that the biologist

per se, does not address, and there is in this legislative history, for instance reference to testimony by Lederberg, for instance on the fact that he had to define from a scientific point of view, the question of when does human life begin. He would have to come back and ask the question of what do you define as a human.

* * * *

[4100] The importance here of the human element in terms of the Judeo-Christian preoccupation with the soul, and, secondly, with regards to that conception of the fetus, you find not only an important stress on description, but you find perhaps even more strikingly a whole range of evaluative comments: the fetus is defined here as vulnerable defenseless, little. Now, you might say from the point of view of those adjectives, that from a purely medical or social, or psychological point of view one can relate the fetus with the themes defenseless, or vulnerable, or at least more vulnerable. And there, again, it's not necessarily a peculiarity of this human fetus because from that point of view, I suppose even a baby walrus, or a guppy, or a puppy in that sense are similarly defenseless or vulnerable, so those adjectives were perhaps not so puzzling. But what was puzzling was the conception of the fetus, again in value terms as innocent, and here again it struck me that what is at issue is an important religious dimension, because when we talk about innocence it is clear here that even in this debate there is a notion of innocence as informed [4101] by the older Hebrew and Greek conception of innocence, as a freedom from something, usually a freedom from guilt or a freedom from sin. And, again, I would suggest this notion of innocence of the fetus certainly in religious terms tends to be viewed as related to the notion of God-given life and of the sanctity that is implied there. So much for the actual perception of the fetus and let us now turn to the conception of the woman carrying the fetus, because here again I was struck by the fact that this woman is seen primarily in one sociological role, the role of pro creator and of nurser.

[4102] Again, it was interesting again that rarely is there a reference to the woman, for example as a person, even though we have some references to the fetus as a person, but the woman is seen primarily in the role as procreator, and she is seen moreover as an adult, fully responsible for her actions and at least implicitly here, a kind of comparison with the fetus that presumably is not fully responsible. Moreover, just as in the conception of the fetus you have both the descriptive and evaluative component, so here in the conception of the woman carrying the fetus there is a strong evaluative dimension, but it runs in the very opposite direction of innocence. Where evaluative comments are made, they tend to be in terms of a woman who has erred, or has gotten herself in trouble, an immoral woman. There are even occasionally punitive comments, women must be punished if they do not bear the responsibility for avoiding pregnancy.

Now, it struck me here again that if you're trying to account for this stress on the procreative role and on the notion of the woman as someone who has, in a sense sinned, that the reference certainly doesn't come from biology. In sociology you don't have the same

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[4103] Now, a third aspect I would like to comment on has to do with the conception of the act of abortion, because, here again the conception is far from value-neutral. The terms such as a killing, death giving, murder, slaughter, crime, heinous crime, extermination, execution, suggest the degree to which this is a deeply value-laden preoccupation. Now, the other thing that struck me here is that in dealing with the act of abortion, again, so much of this debate is caught up in these evaluative preoccupations with the act itself. There is remarkably little debate about abortions, for example as a medical procedure.

Then the third point I would like to make here is that the reference to the decision about abortion, and to some extent also the decision about abortion legislation are time and time again defined as matters of conscience, matters of moral sensitivity, matters that must be decided on moral grounds. Now the question there, it seems to me becomes where does this morality come from, what forms it. Is it essentially a secular morality, or is in informed by a sacred concern? Here I was struck [4104] by the fact that when you look at references to the morality issue personally, you find that very often even though moralities may be identified as such, it is alligned, either in the same sentence or in the same paragraph, with references to explicitly religious language. So that, for example, at one point, one of the congressmen says each one of us must—sorry—each one of us is going to vote our own conscience, our own conscience here today. But when you look at the context in which that statement was made, you find in the very preceding paragraph that same congressman indicating that he was preoccupied about raising his adopted daughter in a Christian home. So, it seems to me that there the close parallel between conscience and specifically Christian home suggest that there are some important religious references.

Now when you look at it from another point of view, you can say well, what about some alternative reference—

THE COURT: What reference?

A Reference in terms of how do you legitimate your moral position. Here I was struck that, for example, some of my colleagues in philosophy of religion and philosophers outside of religion, have after all dealt [4105] with ethical issues such as abortion. Yet in the legislative history there are no references to philosophers as authorities. You can say well, in terms of every day men in America, they don't read philosophy. But here we are reading about congressmen, we're dealing with senators, many of whom certainly read philosophical works, and all I'm saying is there are no efforts to legitimate the morality in terms of distinctly philosophical positions.

Moreover, you could again argue perhaps here, that from a purely anthropological point of view, you could say that these are statements about morality that are

gounded in the very nature of the human animal, and that in all society similar moral positions are taken with regards to the matter of murder of the fetus. But the anthropological evidence will not support that theory, and if you look at the compilation of the human relation area files which include materials on a very, very large number of societies across the whole world, you are struck by the fact that there are important variations on this very theme.

So what I'm saying here then is that this preoccupation with matters of morality, with matters of conscience, does seem to be relating again in an important [4106] way to religious considerations.

Lastly, I would just like to comment briefly on one other thing that runs through much of this legislative history, and obviously was of deep concern to the legislators themselves, namely the depths of feelings of emotions and the divisiveness both now and potentially of the whole abortion issue. Now it seems to me that that very depth of feeling, that very divisiveness has to be accounted for, at least in part, with reference to the religious character of the debate, because it is precisely when positions are informed, are legitimized, are defended on the basis of convictions that are held by virtue of one's faith,—by virtue of truths that are held to be sacred, that are validated however in terms of something that is beyond empirical documentation, that you either accept on the basis of faith or you reject,—compromise is virtually impossible. It seems to me there that again when one looks back in history, we are all aware of the fact that some of the most bitterest and divisive battles among human beings as individuals and groups as well, have always been fought over battles involving a religious dimension. This is particularly because the legitimacy is to some higher authority that can be in one sense never challenged, because you [4107] either accept it absolutely or you do not, but compromise is, in a sense, ruled out. I am suggesting that is simply one aspect that feeds into the whole divisiveness of the issue which is reflected in the legislative history.

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[4110] Q Also, in examining the debate, did you find much reference to denominations or self-identifications by the Congress people?

A Yes, that is actually a rather surprising point, because—first of all, let me say I was surprised by how often somebody without being asked simply volunteered—not just volunteered—but seemed to think it was important to say, "Look, I happen to be a Roman Catholic," or "I happen to be a Baptist," to cite not religion at some point, but religious affiliations, really religious commitment, as though this was presumably somehow a necessary fact toward information in order for others then to understand what that person has to say.

Again, you say why is it surprising? After all, these people have many different roles in American society, one of them is a religious affiliation very often. But what I suppose struck me as surprising is that after all we're dealing primarily in a political arena; moreover, in terms of the whole issue of church-state relations, I would have thought that there might be a particular sensitivity to the problems of, in any sense, bringing religion in here. So there would be a kind of built-in bias to try to keep it out and yet, in spite of this, [4111] what I'm saying is that it was remarkable that people, time and time again, wanted to identify themselves in terms of religious affiliation or with regard to that. One was struck, first, by the fact that on several occasions a Senator or Congressman felt it necessary to say, "Look, we really should not bring religion into this." Presumably, you don't say that unless religion has already been dragged in.

Q Several times in your testimony you talked about religious and moral concerns. I would like to ask you, on the basis of your examination of these debates, whether or not you think these terms are different, referred to as being different things or whether they mean essentially similar things in this particular debate, not as a general matter, obviously.

A In this particular debate, the differentiation of the two is complicated by the fact they're not mutually exclusive. When you deal with religious concerns, very di-

rectly what is being addressed is not simply a concern or a belief, but a moral position or a moral commitment that is informed by certain religious conceptions or certain religious values.

In that sense, you cannot say, "Here is [4112] religion and over there is morality," but at least in principle it is certainly possible that you can have a set of moral positions that are grounded in something other than religion and all I can say there, again, looking at the legislative history, was that it was remarkable how empty that testimony was in terms of such references.

* * * *

[4118] Q What was the dominant element, in your opinion?

A The references to the saliency and importance of the whole matter of abortion, decisions that were made about it, and therefore legislation that affected it with reference to deeply felt beliefs, values, commitments, concerns, that, where they were legitimated or authorities were cited, were done so with reference to traditional religion.

* * * *

[4162] Q As an expert in religion, do you feel that a congressman or a senator, when they use the word "innocence" as thinking at that point in religious terms?

* * * *

A In certain cases it's explicitly linked to religion; in other cases it is not, but I'm simply saying here the notion of innocence makes no sense outside of an essentially religious frame of reference. That's [4163] where it gets its meanings from.

If you look at the OEDT roots, clearly have reference to the notion of freedom from guilt, and in terms that presupposed then some notion of a fetus that is free from guilt precisely because of a religious significance that it was given. After all, in the Judeo-Christian tradition in terms of the whole theme of the fall of Adam, the sinfulness of men, and by contrast, the notion, however, of the human soul and of the fetus here as something, a

gift of God and as something that, until it actually is living in society, therefore, has this God-given innocence.

I'm not saying this is necessarily what is uppermost in every congressman's mind when they talk about the innocence of the fetus, but I'm suggesting, simply in terms of American culture, that the prime reference, when you look for why on earth do we talk about the fetus, not simply as helpless or weak or little, or defenseless, but innocent, that the only source I can find for legitimating that is an essentially religious one.

* * * *

[4214] MR. WASHBURN: Your Honor, the conclusion of the witness, as I take it, is that the word "human being" when used in connection with the word "fetus" is something that has a strongly religious connotation.

Q Is that your conclusion?

* * * *

[4215] I was impressed by the number of times there were these assertions about the essential humanity of the fetus, of it being something that is not living, but is fully human and when I then looked for "How do you know that it's fully human?" the references were disproportionately to considerations that ultimately are religiously grounded, to relate back to the theme of the preciousness of that fetus because it is God-given, because it has a soul, because of the theme I mentioned about the innocence of it, which is a clue of an important religious component.

* * * *

[4698] Q Dr. Lindt, you testified earlier, two weeks ago, that the two most pervasive themes that you found in the legislative history were the humanity of the fetus and the quality of life.

Have you had occasion to examine the presence or absence of those themes on each side of the debate since you appeared the last time?

A Yes, since that was a question that several people here had raised.

* * * *

A On those two major themes I would say that, with regard to the preoccupation with the essential humanity [4699] of the fetus, that is found overwhelmingly on the side of those who take a pro-life position. It's not to say that it doesn't occasionally occur on the other side, but when it does, it's invariable in reference to finding that humanity at some point later than conception.

* * * *

Now, by contrast, when you deal with the quality of [4700] life issue, again, there is a difference, an important difference. Most of these tend to be raised more immediately by those who were opposing the various amendments; but again, where they are raised, they become a part of the debate. They cannot simply be ignored; but the interesting thing is that, when the pro life people take them up, they tend to give them a lower priority and, in effect, say, "look, this isn't really where it's at. We're talking about protecting that essential humanity of the fetus."

* * * *

[4701] There is, throughout the debate this preoccupation obviously, on all sides, with what are defined as essential issues of morality; and obviously, they are not exclusively religious by any means. There are important secular components, but when it comes to the essential question here of establishing the humanity of that fetus, it's at that level, it seems to me, that the moral issues come back time and time again to religious definitions of that humanity and religious legitimations of it.

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EXHIBIT 14

Maternal Mortality Attributed to Complications of Pregnancy and Childbirths, excluding Abortion and Ectopic Gestation, by Woman's Age and Race: United States, 1972-74

Age (years)	Rate per 100,000 live births		
	Total	White	Other
Under 15	32.0	5.2	16.8
15-19	10.4		
20-24	8.7	7.1	18.1
25-29	10.6	9.3	28.8
30-34	22.9	18.9	66.4
35-39	41.4	33.6	112.7
40-44	67.3	71.9	164.7
45 or more	151.5		

Teenage Pregnancies

Two out of thirteen first births in the United States are to girls who are so young that they are biologically "at risk" in childbearing. In 1973, a total of 616,957 girls under 19 years of age gave birth. Of these, 604,096 were between 15 and 19 years of age and 12,861 were under 15 years of age. There were 299 second or later births among mothers under 15, and parity was not reported for 1,150 other mothers in this age group.

The 1973 birth rate was 59.7 per 1,000 for girls 15 to 19 and 1.3 per 1,000 for girls under 15. These rates reflect an 8 percent increase in the number of births to girls under 15 between 1972 and 1973, although all other age groups of women showed a decrease during this period. The birth rate for the 15- to 19-year-old group declined nearly 4 percent from 1972 to 1973.

In the United States, the average age of menarche is 12.5 years, and girls' average age for complete physical maturity is several years later. Girls are at increased risk biologically and emotionally if pregnancy occurs before they complete their own physical growth. (19)

Neonatal, postnatal, and infant mortality rates are much higher for infants born to very young mothers. Statistics showed that for infants of mothers under 15 years of age in New York City in 1968, mortality was 107.3 per 1,000 live births, compared with 21.5 per 1,000 live births in the 20- to 24-year-old age bracket. For infants of mothers under 15, 20 percent weighed less than 2,500 grams at birth compared to 9.7 percent of those born to the 20- to 24-year-old group. (See table 4.)

Studies show that pregnant adolescents have higher rates for toxemia, prolonged labor, premature delivery, pelvic disproportion, and cesarean section than more mature women, and therefore require more intensive maternity care.

* * * *

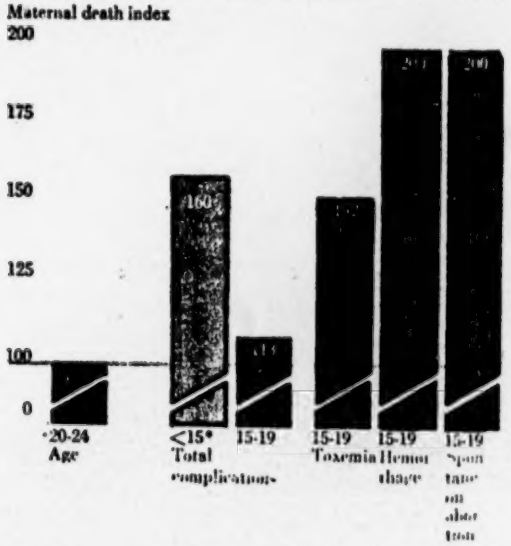
Many pregnant girls are classified as high risk because of social situations that expose them to a wide range of additional health and mental health problems. Efforts to minimize these social conditions and to maintain educational continuity must also be considered in the management of teenage pregnancy. Ideally, suitable health care should be combined with academic programs to prevent the loss of a school year or permanent dropping out of school.

Available family planning services should be accepted and used by the sexually active teenage girl. If a test for pregnancy becomes necessary, the girl should be referred for family planning or prenatal care as indicated by the results. Some young women may wish to receive counseling about abortion services, depending on individual circumstances.

* * * *

EXHIBIT 21, pp. 22-23

Figure 17. Risk of fatal complications during pregnancy, labor and childbirth to teenage mothers and mothers 20-24, United States, 1974 (Risk to mothers 20-24 = 100)



* Numbers too small to calculate ratios for individual complications.

Figure 18. Risk of nonfatal complications of pregnancy, labor and childbirth to previously nulliparous 15-19-year-old mothers and 20-24-year-old mothers, United States, 1960s (Risk of complications to mothers 20-24 = 100)

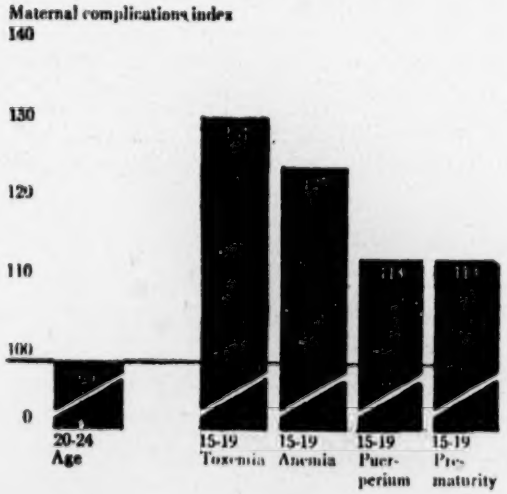


Figure 15. Risk of death in first year of life, per 1,000 infants of mothers aged 19 and younger and mothers aged 20-24, United States, 1960 birth cohort (Risk to babies of mothers 20-24 = 100)

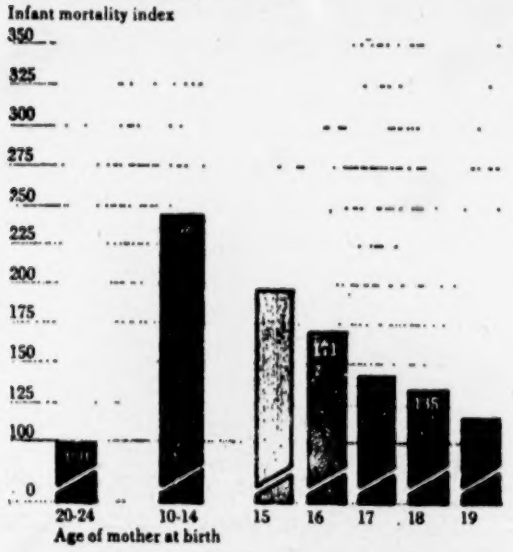


Figure 16. Risk of low birth weight (≤2,500 g) among babies born to teenage mothers and mothers aged 20-24, U.S., 1973 (Risk to babies of mothers 20-24 = 100)

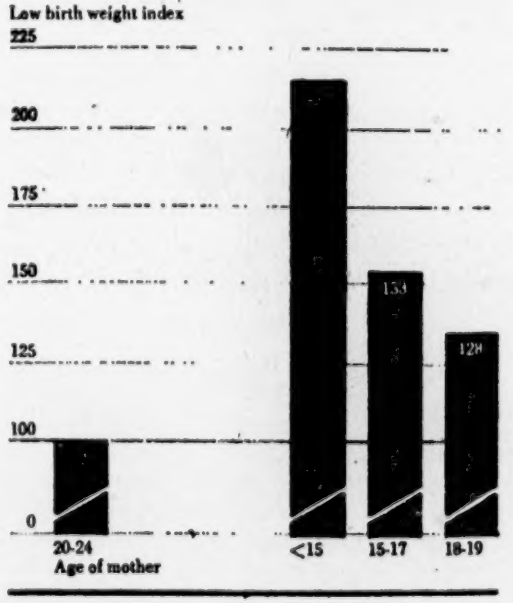


EXHIBIT 24, TABLES 1 AND 3

Table 1. Estimated number of abortions and total expenditures under Title XIX (Medicaid) and Title XX (Social Services) of the Social Security Act, by state, FY 1976*

State	No. of abortions	Expenditures
U.S. total	260,800-274,400†	$60,907,000
Ala.	1,300	338,800
Alaska	300	17,600
Ariz.	‡	‡
Ark.	500	61,300
Calif.	70,000§	24,411,700§
Colo.	2,800§	110,300
Conn.	2,000§	427,500§
Del.	400	44,100
D.C.	7,400§	1,419,800§
Fla.	1,600§	229,300§
Ga.	3,700§	948,600
Hawaii	1,200	212,100
Idaho	u	u
Ill.	18,300§	2,667,100§
Ind.	u	u
Iowa	1,000	297,300
Kans.	3,700§	300,000§
Ky.	900	197,400
La.	u	u
Maine	500	212,100
Md.	5,000§	1,675,000§
Mass.	5,100§	1,105,300§
Mich.	14,800§	2,432,200§
Minn.	1,300	215,700
Miss.	u	u
Mo.	2,400§	180,000§
Mont.	700§	210,000§
Nebr.	300§	11,700§
Nev.	400**	200,000**
N.H.	200§	31,300§
N.J.	100,000§	3,500,000§
N. Mex.	900**	164,700**

State	No. of abortions	Expenditures
N.Y.	50,000§	7,875,000
N.C.	3,100**	1,109,800**
N. Dak	u	u
Ohio	10,000§	2,000,000§
Okla.	700	59,200
Oreg.	2,000§	547,000§
Pa.	10,000§	1,913,100§
R.I.	1,000§	96,300§
S.C.	1,400**	248,900**
S. Dak.	u	u
Tenn.	1,200§	274,700§
Tex.	13,300**	3,500,000
Utah	300§	25,200§
Vt.	300§	179,800
Va.	5,200§	463,100§
Wash.	2,700**	640,000**
W. Va.	300§	91,500§
Wis.	2,500§	250,000
Wyo.	100	12,500

* These estimates differ somewhat from those published earlier. The earlier estimates were based on actual reports from 17 states. These updated estimates include actual reports of abortions and/or expenditures from 32 states and the District of Columbia.

† The 260,800 estimate is the sum of the state totals; the 274,400 estimate is from the AGI 1977 sample survey of abortion providers.

‡ No Medicaid program in FY 1976.

§ Based on Title XIX state reports.

** Based on state reports of Title XIX and Title XX Estimated expenditures and number of abortions performed under Title XX are Nevada, 25 abortions, $12,500, New Mexico, 400 abortions, $77,800; North Carolina, 1,700 abortions, $624,855; South Carolina, 900 abortions, $162,900; Texas, 9,500 abortions, $2,491,700; Washington, 300 abortions, $39,900.

Note: u = unavailable.

Table 3. Average abortion cost, average monthly family AFDC payment and ratio of cost to payment, by state, United States, FY 1976

State	Average abortion cost*	Average AFDC monthly payment†	Cost/ payment ratio
U.S. total	$280	$238	1.2
Ala.	310	113	2.7
Alaska	293	297	0.8
Ariz.	207	141	1.5
Ark.	307	135	2.3
Calif.	379	297	1.3
Colo.	301	205	1.5
Conn.	409	266	1.5
Del.	460	207	2.2
D.C.	239	242	1.0
Fla.	211	139	1.5
Ga.	214	97	2.2
Hawaii	430	363	1.2
Idaho	400	256	1.6
Ill.	225	269	0.8
Ind.	244	168	1.5
Iowa	310	247	1.3
Kans.	379	229	1.7
Ky.	199	171	1.2
La.	160	119	1.3
Maine	274	193	1.4
Md.	280	175	1.6
Mass.	218	300	0.7
Mich.	232	296	0.8
Minn.	278	266	1.0
Miss.	460	48	9.6
Mo.	167	137	1.2
Mont.	383	173	2.2
Nebr.	202	210	1.0
Nev.	250	157	1.6
N.H.	321	217	1.5
N.J.	280	263	1.1
N. Mex.	289	140	2.1

N.Y.	309	363	0.9
N.C.	331	154	2.1
N. Dak.	160	256	0.6
Ohio	202	195	1.0
Okla.	169	203	0.8
Oreg.	415	260	1.6
Pa.	298	283	1.1
R.I.	448	263	1.7
S.C.	226	85	2.6
S. Dak.	160	205	0.8
Tenn.	196	104	1.9
Tex.	208	104	2.0
Utah	184	246	0.7
Vt.	181	255	0.7
Va.	253	191	1.3
Wash.	223	252	0.9
W. Va.	460	196	2.3
Wis.	241	296	0.8
Wyo.	460	196	2.3

* The average costs for a hospital abortion ($460) and clinic abortion ($160) were derived from the AGI provider sample survey. For each state, these averages were multiplied by the percentage of all abortions (from the 1976 AGI abortion survey) performed in hospitals or in clinics and physicians' offices. The results were summed to obtain the average abortion cost in the state.

† Average payment per family, from National Center for Social Statistics, DHEW, *Public Assistance Statistics*, February 1977, June 1977, Table 4A, p. 7.

EXHIBIT 27

Table 7. Percent of contraceptors who fail to delay a wanted pregnancy or to prevent an unwanted pregnancy in the first year of exposure to risk of an unintended conception, by contraceptive method; unstandardized percent and percent standardized on distribution by intent and relative age* (N, in Italics, represents the unweighted equivalent of the denominator)

	Percent failing	
Method	Unstandardized	Standardized
Pill	6	6
IUD	8	12
Condom	17	18
Diaphragm	23	23
Foam	31	31
Rhythm	33	33
Douche	45	39

*Based on monthly pregnancy rates for intervals of orders two through five, calculated for ever-married women, born since July 1, 1925, and interviewed in the National Fertility Study.

EXHIBIT 144

Number of Abortions Performed at Bellevue Hospital Center from January 1, 1969 to July 1, 1970, and Proportion Interviewed by Author (Judith Belsky)

Year	Number of Abortions	Number of Patients Known to Author	% of Total
1969	57	37	65%
1/1-7/1/70	302	285	94%
Total	359	322	90%

EXHIBIT 146

SUICIDE ATTEMPTS DURING PREGNANCY
NUMBER OF PATIENTS

	Before Committee Abolished	After Committee Abolished	Total
During this Pregnancy	12	2	14
During a Previous Pregnancy	10	1	11
During Both this and Previous Pregnancy	1	0	1
Total	23	3	26

METHODS
(Out of 204 Patients)

Single Methods:	(Out of 174 Patients Number of Patients
Overdose or Ingestion of Poison	15
Tried to Drown Self	1
Slashed Wrists	3
Tried to Stab Self	1
Jumped from Fourth Floor Fire Escape	1
Tried to Jump from Window with Child in Her Arms	1
Running in Front of Cars	1
Multiple Methods:	
Overdose and Turned on Gas	1
Overdose and Attempt to Jump from Window	1
Slashed Wrists, Running in Front of Cars	1
Unspecified	1

TREATMENT

6 Patients were Hospitalized
1 Patient Treated in Emergency Room
Remainder Vomited, Treated Themselves, or Did Not Report Suicide Attempt to Anyone

EXHIBIT 147

Attempts by Patient or Another Person to Induce an Illegal Abortion During this Pregnancy

	Before Committee Abolished		After Committee Abolished		Total	
	No. pts.	% (of 20)	No. Pts.	% (of 174)	No. Pts.	% (of 378)
Attempt Admitted at Time of Interview	66	32.4	28	16.1	94	24.9
No Attempt Admitted at Time of Interview; Subsequently Obtained an Illegal Abortion	11	5.4	—	—	11	2.9
Total	77	37.7	28	16.1	105	27.8
	Number				% of Total Who Made Attempts	
Successful Attempts	13				12.4	

EXHIBIT 148

PATIENTS SUCCESSFULLY OBTAINING ILLEGAL ABORTION DURING THIS PREGNANCY

Person Inducing Abortion	Ethnic Group of Patient				Total Patients
	White	Black	P.R.	Other	
Physician	7	1	0	1	9
"Midwife"	0	1	2	0	3
Unknown	0	1	0	0	1
Total	7	3	2	1	13

Reason for Illegal Rather than Legal Abortion	Number of Patients
Patient panicky or impatient with application process	5
Minor, would not inform parents, could not be recommended	3
Insufficient psychiatric grounds, could not be recommended	2
Patient antagonized by house staff after abortion approved	1
Application rejected by committee	1
Patient schizophrenic, withdrew application. . . ? reason	1

EXHIBIT 150

[SEAL]

NEW YORK UNIVERSITY MEDICAL CENTER
School of Medicine
550 First Avenue, New York, N.Y. 10016
Area 212 679-3200
CABLE ADDRESS: NYUMEDIC

Department of Obstetrics and Gynecology
Family Planning Division

January 13, 1970

Re:

Therapeutic Abortion Committee
Bellevue Psychiatric Hospital
First Avenue and 27th Street
New York, N.Y. 10016

Gentlemen:

is a 37-year-old married woman referred for psychiatric evaluation by Dr. J. Kopelman. She is pregnant, her last menstrual period having occurred on November 10, 1969.

Mrs. has eight living children ranging in age from 2 to 19 years. A ninth child died in an accident three years ago. Her husband is a merchant seaman who is seldom at home. The family is beset by an overwhelming incidence of serious illness, both physical and emotional. The 19-year-old son is severely retarded and epileptic, and is unable to walk or speak. The 17-year-old son has been emotionally disturbed since age 4, beats his mother and younger siblings, and requires continual psychiatric treatment. The 6-year-old has a heart murmur, and the 5-year-old has a congenital cardiac condition which requires surgery. This child has had pneumonia numerous times. The 4-year-old is asthmatic, and the 2-year-old has bronchitis. Mrs. had tuberculosis in 1952 requiring surgery, and for the past year has been treated at Bellevue for a thyroid condition. She has been "nervous" and depressed all her life, and during one of

her admissions to the medical service here required transfer to the psychiatric hospital because of her "nerves." She is supposed to take tranquilizers but omits them because she takes "too many other pills." She required psychiatric treatment following the accidental death of one of her children 3 years ago.

On psychiatric examination the patient is worn-looking woman who appears much older than her 37 years. She weeps continually, and shows considerable psychomotor retardation. Her speech is logical and relevant. Her affect is constricted, and her mood is severely depressed. She has difficulty sleeping and dreams that she is drowning and that she is dead. She has thoughts of killing herself. In addition, she is somewhat paranoid, fears that she is followed on the street, and constantly checks her door as she is afraid someone will break in.

* * * *

psychiatric treatment and hospitalization in the past. She is overwhelmed by her children's and her own physical and emotional problems. Under the additional stress of an unwanted pregnancy she is becoming severely depressed and suicidal. Interruption of her pregnancy is therefore strongly recommended.

Very truly yours,

JUDITH E. BELSKY, M.D.
Assistant Clinical Psychiatrist

EXHIBIT 151

[SEAL]

NEW YORK UNIVERSITY MEDICAL CENTER
School of Medicine
550 First Avenue, New York, N.Y. 10016
Area 212 679-3200
CABLE ADDRESS: NYUMEDIC

Department of Obstetrics and Genecology
Family Planning Division

February 11, 1970

Re:

Therapeutic Abortion Committee
Bellevue Hospital Center
First Avenue and 27th Street
New York, N.Y. 10016

Gentlemen:

is a 19-year-old unmarried girl referred for psychiatric evaluation regarding a possible therpeutic abortion by Dr. Victoria Sears of the Nassau County Drug Abuse and Addiction Commission. She is 16 to 18 weeks pregnant.

has an extraordinarily traumatic life history. She was sexually molested by her father from age 12 on, tacitly encouraged by her psychotic mother who outwardly denied knowledge of their relationship. At age 16 she became pregnant, but not one detected it. She delivered the baby alone in a bathroom at home and threw the fetus in the garbage. She does not know whether it was alive or not. Immediately afterwards she began "shooting" heroin in an attempt to obliterate her unbearable guilt and depression. For a week she believed the baby was still in the basement. She continued to use heroin whenever she felt depressed and whenever her father forced her to have intercourse with him. When she finally told her mother about her father's behavior, her mother blamed her. She eventually was arrested because of her drug use, and her mother refused to put up

bail. At her own request she was sent to Topic House, a residential treatment center for addicts, despite the fact that she has never been addicted. She has improved sufficiently in treatment to start college and work part-time. Since she has become pregnant, she has begun to decompensate, is unable to concentrate on her work, cannot eat or sleep, and has terrifying nightmares.

On psychiatric examination the patient is an articulate, attractive young woman who appears extremely depressed. Her pregnancy has exacerbated her severe guilt and self-hatred, and she is thinking of killing herself with an overdose of heroin. She is also thinking of aborting herself with a hanger. She feels as if she is living in a nightmare, and is afraid she will "explode."

In summary, this patient has been seriously depressed and self-destructive in the past. She is reacting to her unwanted pregnancy with severe depression, self-condemnation, and suicidal ideation. Interruption of her pregnancy is therefore urgently advised.

Very truly yours,

JUDITH E. BELSKY, M.D.
Assistant Clinical Psychiatrist

EXHIBIT 152

[SEAL]

NEW YORK UNIVERSITY MEDICAL CENTER
School of Medicine
550 First Avenue, New York, N.Y. 10016
Area 212 679-3200
CABLE ADDRESS: NYUMEDIC

Department of Obstetrics and Gynecology
Family Planning Division

November 13, 1969
Re:
New York, N.Y.
Neighbor's Telephone (" - ")

Therapeutic Abortion Committee
Bellevue Hospital Center
First Avenue and 27th Street
New York, N.Y. 10016

Gentlemen:

is a 25-year-old unmarried woman referred for psychiatric evaluation by Dr. because of depression and self-destructive behavior. She is pregnant, her last menstrual period having occurred on August 25th.

Miss has a history of serious psychiatric disturbance. She has had two admissions to Bellevue Psychiatric Hospital for suicide attempts. In July 1964 she cut her wrists and turned on the gas in her apartment. In 1965 she felt depressed and attempted to drown herself in the East River. At age 12 she discovered that her mother had been stabbed in the neck, and since that time has been terrified by the sight of blood. She becomes nervous and frightened when she menstruates, and has refused transfusions because of her morbid fear.

Miss has a 9-month-old daughter toward whom she feels extremely ambivalent. She becomes irritated when the baby cries, and does "bad things" to her such as tying a rag around her mouth to muffle her crying. She has not taken the baby to pediatric clinic for many months. Since learning of her pregnancy she has become increasingly depressed and agitated. She has difficulty sleeping, and has recurrent nightmares of her mother being stabbed. She has unsuccessfully tried to abort herself by ingesting LSD, turpentine and kerosene, and by packing her vagina with aspirin tablets.

On psychiatric examination the patient is cooperative, but appears dreamy and detached. Her affect is extremely flat, except when she relate her mother's stabbing and weeps uncontrollably. Her mood is depressed. Her speech is often irrelevant and circumstantial, and her thinking is paralogical. She intends to abort herself by any means, despite the risk to her life that this involves. She is impulsive and grossly lacking in judgement and insight.

In summary, this is a chronic schizophrenic woman who has been hospitalized for two previous suicide attempts. She is reacting to her unwanted pregnancy with seriously self-destructive behavior and physical abuse of her 9-month-old infant. A therapeutic abortion is therefore urgently advised.

Very truly yours,

JUDITH E. BELSKY, M.D.
Assistant Clinical Psychiatrist

JE:kk

EXHIBIT 156

May 6, 1969

Therapeutic Abortion Committee
Bellevue Hospital
First Avenue & 30th St.
New York, New York 10016

Re:
Age:
New York, N.Y.

Gentlemen:

is a twenty-three-year-old Puerto Rican housewife referred to me by the Family Planning Clinic for psychiatric evaluation after she was found to be two months pregnant. Mrs. lives with her husband, four children, and her seventy-two-year-old grandmother in a small crowded apartment. Her children include a four-year-old son who is asthmatic, a three-year-old daughter (whose twin died at birth), and one-year-old twin daughters. Her husband earns $60 per week, and this is supplemented by Welfare. Mrs. had been taking Enouid for contraceptive purposes. She states that she had forgotten to take a pill once in March, then resumed taking them but failed to menstruate after that. Her last menstrual period was February 19th. The patient is retarded, has a very vague sense of time, gives inaccurate dates, and probably missed more than one pill during a cycle.

Mrs. states she has been "nervous" since childhood, always fought with her brothers and "broke everything in the house". At age twelve, her mother took her to Court for setting fire to the curtains in their apartment. She says she set the fire because her mother and brothers were "bothering" her. The Court sent her to Wassaic, and her mother subsequently told her she was retarded. Mrs. has always felt rejected by her mother who refuses to help her take care of the children. Her seventy-two-year-old grandmother can help her only to a limited extent.

Mrs. still feels very "nervous". She finds it impossible to cope with the children and do her household chores. She often feels the children are too much for her, fears they will fall out of the window or otherwise hurt themselves.

She has been unable to take them to clinic regularly. When they are troublesome or noisey she beats them with her hands, shoes a frying pan, or other objects because "I can't control myself". She knocked her four-year-old daughter unconscious on one occasion, and beat her son so badly that her husband threatened to take the children away from her. Recently she has been leaving the home when she feels "nervous", and once left the children unsupervised for several hours. Sometimes she thinks of setting fire to the house and tells her husband he will find her and the children "burned up". She is unwilling to have another child and has told her husband she will kill herself if she has to have the baby. She went up to the roof with the intention of jumping off, but her husband and grandmother persuaded her to come down.

On psychiatric examination Mrs. is an obese woman who relates in a rather child-like manner. She appears anxious and often smiles inappropriately. Her speech is coherent, logical and relevant. Affect is labile, and she weeps easily. Her mood is depressed. She expresses suicidal and homicidal ideation, as described above. She has had difficulty sleeping and has recurrent nightmares in which people turn into animals or monsters and cut her with knives. She has some paranoid ideation in that she is afraid people follow her on the street and constantly looks back over her shoulders. She has no organized delusions or hallucinations. Clinically, Mrs. appears to be of very limited intelligence. Her sense of time is vague, and her memory for past events and dates is poor. She lacks insight and her judgment is poor.

In summary, this is a retarded woman who has been unable to manage her responsibilities at home, who is overburdened by four young children, crowded living conditions and numerous financial worries. She has extremely poor impulse control, and has reacted to frustration by lashing out at her children in a most destructive manner. The added burden of pregnancy further decreased her ability to manage at home, and has created a signfiicant risk of suicide and/or homicide. For these reasons, termination of her pregnancy by a therapeutic abortion is strongly advised.

Very truly yours,

JUDITH E. BELSKY, M.D.
Staff Psychiatrist

JEB:jah

EXHIBIT 159 (1)

[SEAL]

NEW YORK UNIVERSITY MEDICAL CENTER
School of Medicine
550 First Avenue, New York, N.Y. 10016
Area 212 679-3200
CABLE ADDRESS: NYUMEDIC

Department of Obstetrics and Gynecology
Family Planning Division

March 16, 1970
Re:
Chart
Husband:
Tel at work:

Therapeutic Abortion Committee
Bellevue Hospital Center

Gentlemen:

is a 22-year-old married Indian woman from British Guiana referred for psychiatric evaluation by the Bellevue Prenatal Clinic because of severe depression, irrational behavior and hyperemesis. She is about 8 weeks pregnant.

Mrs. has been maried for five years and has two children aged 3½ years and 9 months. During her second pregnancy she had hyperemesis necessitating hospitalization, but apparently unaccompanied by severe psychiatric symptoms. She believes that this pregnancy resulted from rape, and it seems likely that this belief is delusional. She states that during December she fainted at work and was brought home by a man whom she believes raped her while she was unconscious. Her last menstrual period was in January. Since she has been aware of her pregnancy she has had persistent vomiting resulting in a weight loss of 18 pounds. She has been

unable to sleep because of a feeling that she is choking. When she does sleep she has nightmares of killing a man and being strangled by a man. She is unable to take care of her infant's most fundamental needs such as feeding and bathing. Recently she has been physically assaulting both her husband and the child for no apparent reason, and her husband states that she appears "confused" during these attacks.

On psychiatric examination the patient is a thin, dazed-looking woman who appears as if she is physically on the verge of collapse. Her voice is low and monotonous, and her speech is often illogical. Her affect is constricted and her mood is severely depressed. She believes she is going to die, pleads for help, and states she will poison herself if she has to continue her pregnancy. She thinks that her husband will die if he discovers she is "carrying someone else's child." She has been having auditory hallucinations, hearing women's voices calling her, and when she closes her eyes she sees nude woman. Her physical and mental condition necessitated her admission to the hospital at the time of this interview.

In summary, this is a paranoid schizophrenic woman who has become acutely psychotic, suicidal and assaultive in response to her pregnancy. A therapeutic abortion is therefore urgently advised.

Very truly yours,

JUDITH E. BELSKY, M.D.
Assistant Clinical Psychiatrist

I have interviewed the patient, agree with the above evaluation and concur in the recommendation for termination of pregnancy.

/s/ [Illegible]

/s/ Lawrence Shaderowfsky MD

EXHIBIT 159 (7)

[SEAL]

NEW YORK UNIVERSITY MEDICAL CENTER

School of Medicine
550 First Avenue, New York, N.Y. 10016
Area 212 679-3200
CABLE ADDRESS: NYUMEDIC

Department of Obstetrics and Gynecology
Family Planning Division

April 1, 1970

Therapeutic Abortion Committee
Bellevue Hospital Center

Gentlemen:

is a 26-year-old widow referred by the Clergymen's Committee for psychiatric evaluation regarding a possible therapeutic abortion. She is about two months pregnant despite her use of contraceptive foam.

Mrs. is pregnant by her husband who was murdered a month ago. She has 3 living children aged 9, 8 and 4 years. One child died a "crib death" at two months of age. The patient has had toxemia during each of her pregnancies, and is presently hypertensive with blood pressure readings of 180/100. She has eye ground changes and edema, and has been told that she will require prolonged hospitalization during this pregnancy. Since she has known of her pregnancy she has had severe nausea, vomiting, headaches and dizziness. She has become severely depressed and nervous, has insomnina and frequent crying spells. Her physician has prescribed phenobarbital, Librium and Doriden for her.

On psychiatric examination the patient attempts to control herself but eventually bursts into tears. She sees no future for herself or her children if she has this child, and intends to kill herself with an overdose of tranquil-

izers and sleeping pills if she cannot obtain an abortion. Her judgment at this time is seriously impaired.

In summary, this woman has recently lost her husband through murder. The prospect of continuing a difficult and unwanted pregnancy under these circumstances is so overwhelming to her that she has become severely depressed and suicidal. Interruption of her pregnancy is therefore urgently recommended.

Very truly yours,

/s/ Judith E. Belsky
JUDITH E. BELSKY, M.D.
Assistant Clinical Psychiatrist

I have interviewed the patient, agree with the above evaluation and concur in the recommendation for termination of pregnancy.

PAULINE RUDNICK, M.D.

EXHIBIT 159(x)

[SEAL]

NEW YORK UNIVERSITY MEDICAL CENTER

School of Medicine
550 First Avenue, New York, N.Y. 10016
Area 212 679-3200
CABLE ADDRESS: NYUMEDIC

Department of Obstetrics and Gynecology
Family Planning Division

November 17, 1969

Re:

New York, N.Y.
Neighbor's telephone:

Therapeutic Abortion Committee
Bellevue Hospital Center
First Avenue and 27th Street
New York, N.Y. 10016

Gentlemen:

is a 26-year-old divorcee referred for psychiatric evaluation because of agitation and suicidal ideation. She is pregnant, her last menstrual period having occurred on September 6th.

life has been marked by overwhelming tragedy and medical and psychiatric illness. Her mother died when she was an infant, and her father committed suicide when she was 6 years old. She spent part of her childhood with a foster mother who brutally mistreated her, severing her finger with a scissors. The remainder of her childhood was spent in an orphange. She married a 57-year-old man when she was 20, and left him two years ago because of severe marital and emotional difficulties. She has suffered for several years from recurrent renal infections and a bleeding disorder, which possibly has a genetic basis. She has used amphetamine intermittently since she was in high school, and has had several episodes of severe agitated depression. In 1964 she was admitted to Bellevue Psychiatric Hospital during one of these episodes. She was followed for a short time in the Mental Hygiene Clinic, but subsequently moved to New Jersey where she had to be hospitalized for an overdose of meprobamate. She has gone for long periods without eating adequately, and has suffered from malnutrition.

Since she has been pregnant, the patient has become increasingly depressed and agitated. She has frequent crying spells, sleeps poorly, and awakens screaming from recurrent nightmares. She also has nausea, vomiting and dizzy spells. She recently attempted to abort herself by taking large amounts of orgotrate, quinine and Thalidomide, which she obtained from a friend.

On psychiatric examination, the patient is tense and anxious. She weeps uncontrollable at times. Her speech is logical and relevant. Her affect is constricted, and her mood very depressed. She often thinks of killing herself by taking an overdose of pills or jumping out of the window. She is severely phobic, and is afraid to walk into the psychiatric hospital unaccompanied because of the mice and roaches. The patient also has feelings of depersonalization and unreality. She is impulsive, and her judgment is considerable impaired.

In brief, this is a chronically disturbed woman who is reacting to her unwanted pregnancy with severe agitated depression, suicidal ideation, and seriously self-destructive behavior. She has taken Thalidomide during her early pregnancy. A therapeutic abortion is therefore strongly recommended on both psychiatric and engenic grounds.

Very truly yours,

JUDITH E. BELSKY, M.D.
Assistant Clinical Psychiatrist

JEB:kk

EXHIBIT 169

AMERICAN ACADEMY OF CHILD PSYCHIATRY
1800 R Street, N.W., Suite 904
Washington, D.C. 20009
Area Code 202-462-3754

November 2, 1977

FOR YOUR INFORMATION

The Council of the American Academy of Child Psychiatry unanimously endorsed the enclosed position statement on Medicaid funding for abortion for women under the age of 16 because of its effects on the mental health of the mother and the unplanned child. We ask that it be disseminated to both the press and legislative bodies.

The AACP, composed of 1896 medically certified specialists in child psychiatry, also represent 28 affiliated regional associations of child psychiatrists in the United States.

We ask that this statement be given your earnest consideration for publication.

FOR FURTHER INFORMATION CONTACT:

1) Virginia Q. Bausch, Executive Director
American Academy of Child Psychiatry
1800 R Street, N.W.
Washington, D.C. 20009 (202) 462-3754

2) Maurice R. Friend, M.D., Chairman Public Information Comm.
262 Central Park West
New York, New York 10024 (12) EN 2-7541

NEWS RELEASE *RE: ABORTION*

TWENTY FOURTH ANNUAL MEETING
OCTOBER 19-23, 1977
AMERICAN ACADEMY OF CHILD PSYCHIATRY
SUITE 904, 1800 R STREET, N.W.
WASHINGTON, D.C. 20009
(202) 462-3754

HOUSTON, TEXAS OCTOBER—1977

The American Academy of Child Psychiatry is aware of the national debate concerning the funding of abortion by the Medicaid system. The Academy wishes to declare that there is now a body of scientific data which confirms:

1) that the young adolescent most vulnerable to early pregnancy is the product of adverse sociocultural conditions involving poverty, discrimination, family disorganization and the like.

2) that the resulting pregnancy is statistically laden with medical complications that threaten the well being of both mother and fetus;

3) that the delivery that ensues is prone to prematurity and major threats to the health of both mother and child;

4) that the resulting newborns have a higher percentage of birth defects, developmental difficulties and a poorer life and health expectancy than the average for our society.

5) that such children are often not given up for adoption and eventually get caught in the web of the foster care and welfare systems where they enter a lifetime of dependency and expensive social interventions.

6) that these children are often unwanted and in a short time become prone to abuse, neglect, failure to thrive, and serious medical illness.

7) that the tendency of this pattern to pass from generation to generation is very marked and thus serves to perpetuate a cycle of social and educational failure, mental and physical illness, and serious delinquency and

8) that the freedom to act to interrupt this cycle must be considered a mental health imperative with major social implications.

As a result of these data, it is urgently recommended that elective abortion for teenage pregnancy be adequately funded within the Medicaid System.

FOR FURTHER INFORMATION CONTACT:

1) Virginia Q. Bausch, Executive Director
American Academy of Child Psychiatry
(202) 462-3754
1800 R Street, N.W., Washington, D.C. 20009

2) Maurice R. Friend, M.D., Chairman, Public Information Comm.
262 Central Park West
New York, New York 10024 (212) EN 2-7541

EXHIBIT 177

Analysis of DHEW Table, "Average Monthly Number of Abortions Under XIX," 6/7/78 Revision

States Adopting FY 1978 Hyde Language *

	1976 Estimated Monthly Average No. of Abortions (per AGI)	Fy 1977 Monthly Average No. of Abortions (per DHEW)	Pre Hyde II 6.33 Months 8/4/77 to 2/13/78 Monthly Average No. of Abortions (per DHEW)	Post Hyde II 3.75 Months 2/14/78 to 6/6/78 Monthly Average No. of Abortions (per DHEW)	Percent Change— FY 1977 to Post Hyde II (2-4÷2)
	(1)	(2)	(3)	(4)	(5)
Alabama	108	84	0	0	—100%
Arkansas	42	53	0.2	1.1	—97.9%
Maine	42	29	0.5	0	—100%
Montana	58	38	0	0	—100%
Nevada	31**	33	0	0	—100%
Oklahoma	58	52	2.4	0.3	—99.4%
South Carolina	42**	85	1.1	1.9	—97.8%
Texas	317**	257	4.3	1.9	—99.3%
Total	698	631	8.5	5.2	—99.2%

* Delaware, Geordgia, Indiana, Mississippi and Vermont also adopted the FY 1978 Hyde language, but DHEW data are not available for these states.

** includes Title XIX-funded abortions only, excluding Title XX.

States with "Life Endangerment" Language Only *

	1976 Estimated Monthly Average No. of Abortions (per AGI)	Fy 1977 Monthly Average No. of Abortions (per DHEW)	Pre Hyde II 6.33 Months 8/4/77 to 2/13/78 Monthly Average No. of Abortions (per DHEW)	Post Hyde II 3.75 Months 2/14/78 to 6/8/78 Monthly Average No. of Abortions (per DHEW)	Percent Change— FY 1977 to Post Hyde II (2-4÷2)
	(1)	(2)	(3)	(4)	(5)
Connecticut	167	145	49.2	8.3	—94.3%
Florida	133	361	9.3	7.7	—97.9%
Kansas	308	251	121.6	6.7	—97.3%
New Hampshire	17	17	1.1	0	—100%
Utah	25	16	3.6	2.7	—83.1%
Total	650	790	184.8	25.4	—96.8%

* Louisiana, Ohio and Tennessee also adopted "life endangerment" language, but DHEW data are not available for these states.

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States with "Preserve Life" Language Only *

	1976 Estimated Monthly Average No. of Abortions (per AGI)	Fy 1977 Monthly Average No. of Abortions (per DHEW)	Pre Hyde II 6.33 Months 8/4/77 to 2/13/78 Monthly Average No. of Abortions (per DHEW)	Post Hyde II 3.75 Months 2/14/78 to 6/6/78 Monthly Average No. of Abortions (per DHEW)	Percent Change— FY 1977 to Post Hyde II (2-4÷2)
	(1)	(2)	(3)	(4)	(5)
Kentucky	75	155	1.7	NA	—98.9%+
Missouri	200	206	0	0	—100%
New Jersey	833	1,150	20.5	18.7	—98.4%
Rhode Island	83	58	0.3	0	—100%
South Dakota	NA	0	0	0.3	—
Total	1,191	1,569	22.5	19.0	—98.8%

* North Dakota has also adopted "preserve life" lanugage, but DHEW data are not available for this state.

+ Percent change from FY 1977 to Pre Hyde II.

NA Data are not available.

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States with "Life Endangerment, Rape and Incest" Lanugage *

	1976 Estimated Monthly Average No. of Abortions (per AGI)	Fy 1977 Monthly Average No. of Abortions (per DHEW)	Pre Hyde II 6.33 Months 8/4/77 to 2/13/78 Monthly Average No. of Abortions (per DHEW)	Post Hyde II 3.75 Months 2/14/78 to 6/6/78 Monthly Average No. of Abortions (per DHEW)	Percent Change— FY 1977 to Post Hyde II (2-4÷2)
	(1)	(2)	(3)	(4)	(5)
Minnesota	108	160	35.9	0	—100%
Nebraska	25	43	0	0	—100%
New Mexico	42	43	27.4	4.8	—88.8%
Wyoming	8	5	0	0	—100%
Total	183	251	63.3	4.8	—98.1%

* Wisconsin also adopted "life endangerment, rape and incest" language, but DHEW data are not available for this state.

Analysis of DHEW Table, "Number of Abortions, Post Hyde II, 2/14/78—Present, 3-3/4 mos.," 6/7/78 Revision

States Adopting FY 1978 Hyde Lanugage *

	No. of Abortions Certified Post Hyde II, 2/14/78 to 6/7/78 (3.75 mos.) per DHEW)	Reason of Acceptance (per DHEW)			FY 1977 Average Monthly No. of Abortions (per DHEW) X 3.75 Months
		Endanger Mother's Life	Long Lasting Damage	Rape or Incest Victim	
Alabama	0	0	0	0	315.0
Arkansas	4	1	2	1	198.7
Maine	0	0	0	0	108.7
Mississippi	12	11	0	1	NA
Montana	0	0	0	0	142.5
Nevada	0	0	0	0	123.7
Oklahoma	1	0	1	0	195.0
South Carolina	7	6	0	1	318.7
Texas	7	0	0	7	963.7
Total number	31	18	3	10	2,366.3
Total percent	100.0%	58.1%	9.7%	32.2%	

Note: Change from FY 1977 (2,366.3) to Post Hyde II (31):—98.7%.

* Georgia, Delaware and Vermont also adopted the FY 1978 Hyde language, but DHEW data are not available for these states.

NA data are not available.

EXHIBIT 240

PROJECTION OF EXCESS MORTALITY

If Term Births are Substituted for Legal Abortions

If all pregnant women who would have sought Medicaid funds for abortion carried their pregnancy to term, there would be deaths in excess of the current number because of the relatively greater risks of pregnancy and childbirth. Because legal abortion is safer than childbearing (*6*), and because those women whose abortions have been publicly funded have a racial distribution which puts them at a higher risk of material mortality than the general population, this seemingly innocuous alternative to abortion results in a sizeable number of excess deaths to women of childbearing age.

In 1974, the risk of mortality from pregnancy and childbearing was 10.0 deaths per 100,000 live births in white women and 35.1 deaths per 100,000 live births from women of black-and-other races (*5*). The mortality ratio for abortion in 1974 was 0.5 deaths per 100,000 abortions for white women and 2.4 deaths per 100,000 abortions for black-and-other women. Thus, the risk of death from pregnancy and childbirth excluding abortion —the attributable mortality risk—is 9.5 per 100,000 live births for white women and 32.7 per 100,000 live births for women of black-and-other races. Applying the attributable mortality risk to the number of pregnancies for women who would have sought a Medicaid funded abortion, we project 15 excess deaths among white women and 29 excess deaths among women of black-and-other races (Table 1). The total number of excess deaths is 44.

If Nonlegal Abortions are Substituted for Legal Abortions

We estimate that excess deaths for women of childbearing age will also occur if pregnant women obtain abortions induced by persons other than physicians. Tietze estimates that the mortality rate of nonlegal abortion in developed countries is 40 per 100,000 procedures (*7*). The death-to-case rate for legal abortion is about

4 per 100,000 abortion (*6*) for an attributable mortality risk of 36 deaths from every 100,000 nonlegal abortions. If all 250,000 women who would have obtained a legal abortion terminated their pregnancies through nonlegal channels, then 90 excess deaths would result.

However, it is unlikely that every woman would choose a nonlegal abortion; some would carry the pregnancy to term. Tietze further estimated that 70% of current legal abortions replaced nonlegal and self-induced abortions (*8*). If 70% of the 250,000 pregnant women who would have had a Medicaid funded abortion have a nonlegal abortion, we estimate that 63 excess deaths would occur. The remaining 30% who carry the pregnancy to term are subject to increased risk of childbearing. Applying the relevant mortality ratios by race to the remaining 30% of women seeking Medicaid funded abortions, 14 additional deaths are projected. Thus, we calculate a total of 77 excess deaths to women of reproductive age if previous proportions of nonlegal abortion were substituted for legal abortion.

Delay in Obtaining Legal Abortions

Because even legal abortion becomes more risky the later in pregnancy it is performed (*6*), any delay in obtaining an abortion would result in excess mortality risks. Assuming Medicaid funded abortions have the same distribution by gestational age as non-Medicaid funded abortions, we can project the number of Medicaid funded abortions by gestational age (Table 2). If difficulty in obtaining funds for abortion resulted in an average delay of *only two weeks* for each legal abortion among these women, 5 excess deaths would have occurred (Table 2). While 5 deaths does not seem like a large number, it would have increased the death-to-case rate for women eventually having abortions with public funds by nearly 60%, and raised the overall national abortion death-to-case rate by 21%. The impact of early decision-making and prompt financial accessability to abortion services on minimizing abortion mortality should be stressed.

CONCLUSION

The most important principle of this analysis is that once pregnant, a woman encounters an increased risk of death, no matter what her choice of outcomes. While the risks of pregnancy and childbirth are readily assumed in the case of wanted pregnancy, unfortunately not all pregnancies are wanted. For unwanted pregnancies, legal abortion in the first-trimester is the safest option available to women.

The actual impact of non-funding would depend on the number of women seeking Medicaid funds for abortion, on the proportion choosing to carry the pregnancy to term, on those choosing a nonlegal abortion, and on the delay encountered in obtaining other funding sources. If publicly funded abortions were restricted, we have calculated that from 5 to 90 excess deaths would result for women of childbearing age in the United States depending on the distribution of the above options chosen by pregnant women whose public funding has been denied. Thus, any permutation or combination of the various alternatives presented above would result in a predictable level of deaths in excess of the current level to pregnant women seeking abortion who must rely on public funding for medical care.

EXHIBIT 248

CONCERNS

1. I am not privy to all of the potential program tradeoffs to be made, or perhaps being made, in the budget process. It is clear to me, however, from information regarding PHS program funding intentions (Attachment 3) that *at least a possibility exists whereby the attention to the teenage pregnancy population may up-stage that portion of the abortion-desiring constituency which is not teenage.*

Petitioners for abortions subsidized by this department have perhaps more differences than similarities when examined regarding reasons for seeking an abortion. The broadest safe generalizations divide them into a minimum of two categories:

Teenage

A. Health Problems

- High maternal mortality rate especially for teenagers under fifteen
- Complications of pregnancy include:
  - —High occurrence of toxemia (blood poisoning) and anemia
  - —High occurrence of contracted pelvis thereby inhibiting physical growth
  - —High occurrence of preeclampsia (convulsions)
  - —High occurrence of prolonged and premature labor
- High infant mortality
  - —Greatest risk in very young mothers
  - —Greatest risk in second and higher order births
- Low birth weight infants are twice as high among teenagers under fifteen than for all pregnant women

  Low birth weight is correlated with:

  —cerebral palsy

  —epilepsy

  —mental retardation

- High Childhood (1 year old and older) mortality
- High psychological stress for young women who become pregnant

B. Social Concerns

- Higher school dropout rate for pregnant female adolescents
- Low employment and earning level throughout life
- Increased fertility, including high incidence of unwanted births
- Family stress

  —divorce

  —intrafamily violence, especially child abuse

  —suicide

20-45 Years

- Defects or handicaps among previous/live births
- Already acquired maximum children for whom there can be an economic responsibility
- Already acquired maximum children for whom there can be an emotional responsibility
- Already acquired maximum children for whom there can be a physical responsibility
- To avoid withdrawal from labor market and consequent public dependency
- To avoid withdrawal from labor market which will deprive current dependent
- Household or family unit currently a state of flux with uncertainty that parent(s) would not have to default in responsibility to child if carried to term.
- Preservation of health either by spacing or limiting number of term pregnancies

Other sub-categorizations could be generalized on the basis of ethnicity, geography, marital status, education/income, urban/rural availability of support systems and services, age, labor market rewards/incentives, etc.

2. *Abortion is but one alternative solution to many of the "problems," reflected in the lists above, which may make a pregnancy unwise or unwanted particularly when related to the reasons of women in the 20-45 age category. It is an option, uniquely, which is exercised between conception and live birth. As such, the literal alternatives to it are suicide, motherhood, and, some would add, madness Consequently, there is some confusion, discomfort, and cynicism greeting efforts to "find" or "emphasize" or "identify" Alternatives to Abortions.*

EXHIBIT 455 A-D

REPRODUCTIVE SERVICES INC.
Human Fertility Planning

October 13, 1977

Associate Medical Director
National Health Ins.
7800 Shoal Creek Blvd.
Austin, Tx 78757

Attn: Dr. Perlman

Re:

Dear Dr. Perlman:

The above named patient was referred to me from Nacogdoches by her physician (letters enclosed) with the diagnosis of chronic glomerulonephritis.

I agree with the physician that a therapeutic abortion is necessary for the preservation of her life and health.

I am therefore requesting prior approval for a therapeutic abortion.

Your immediate response is appreciated.

Sincerely,

Dudley Powell, M.D.
Reproductive Services Inc.
2339 Inwood Rd. Suite 37
Dallas, Tx 75235

WILLIAM WAYNE HAIRSTON, D.O.
PHYSICIAN & SURGEON
932 University Drive Nacogdoches, Texas 75061

10-13-77

To whom it may concern:

[Name deleted] is a 15 year old girl who is about 9-10 weeks pregnant by date her LMP was 1st week in August but she really feels 1-2 weeks further along. She has chronic glomerulonephritis & it has been recommended by her & her parents that a *therapeutic abortion* be performed to avoid complications of her disease. She is normotensive & her renal function studies are well at this time. P. E. really unremarkable.

/s/ Williaam Wayne Hairston, D.O.
WILLIAM WAYNE HAIRSTON, D.O.

WILLIAM WAYNE HAIRSTON, D.O.
PHYSICIAN & SURGEON
932 University Drive Nacogdoches, Texas 75061

10-17-77

To whom it may concern:

This letter accompanies a previous letter I have written about [Name Deleted]. Let me reemphasize that I do believe an abortion is necessary and that pregnancy carried to term could be life threatening in the face of her history of chronic glomerulonephritis.

/s/ Williaam Wayne Hairston, D.O.
WILLIAM WAYNE HAIRSTON, D.O.

NATIONAL HEALTH INSURANCE COMPANY
Austin, Texas 78757
Exchange Park, 7800 Shoal Creek Blvd., (512) 458-5111

October 20, 1977

Dudley Powell, M.D.
Reproductive Services, Inc.
2339 Inwood Rd. Suite 37
Dallas, Texas 75235

Re:

Dear Dr. Powell:

Your request for abortion for the above named recipient has been denied. The recipient's condition described in your letter of October 18, 1977, does not fall within the established medical guidelines for therapeutic abortion under the Medicaid Program. These guidelines include only those conditions which would endanger the mother's life if the fetus were carried to term.

Sincerely,

/s/ Jack M. Perlman, M.D.
JACK M. PERLMAN, M.D.
Associate Medical Director

JMP:11d

Defendants' Exhibit H

Classification and Preventabiilty

Maternal deaths have been classified according to The American College of Obstetricians and Gynecologists' publication, *Ostetric-Gynecologic Terminology.*

A *direct maternal death* is an obstetric death resulting from obstetric complications of the pregnancy state, labor, or puerperium—from interventions, omissions, incorrect treatment, or a chain of events resulting from any of the above. *Indirect maternal death* is an obstetric death resulting from previously existing disease, or disease that developed during pregnancy, labor, or the puerperium; it is not directly due to obstetric causes, but aggravated by the physiologic effects of pregnancy. *Nonmaternal death* is an obstetric death resulting from accidental or incidental causes not related to the pregnancy or its management.

For the years 1970-1976, a total of 149 maternal deaths with complete case reports have been classified as follows:

Direct Maternal Death	69.1%
Indirect Maternal Death	25.5%
Nonmaternal Death	5.4%

Hypertensive States of Pregnancy

There are certain vascular derangements that either antedate or arise in pregnancy or the early puerperium that have been designated as the toxemias of pregnancy, EPH (edema, proteinuria, hypertension) complex, gestosis, and other terms. These generic terms have grouped together several conditions that have been characterized by hypertension sometimes associated with proteinuria, edema, convulsions, coma, and other signs. Because these terms have been all-inclusive, discrepancies in statistical reporting have occurred. The Committee on Terminology of The American College of Obstetricians and Gynecologists discourages the use of term "toxemia" and suggests these conditions be classified as hypertensive states of pregnancy.

Preeclampsia and eclampsia, categorized under hypertensive states of pregnancy, constitute one of the leading causes of maternal death and contribute significantly to perinatal mortality. The incidence of these conditions, not only nationally but also in New York State, has steadily declined during this century and the associated maternal mortality has fallen markedly with a resultant low proportion of the total maternal deaths attributed to these conditions. However, an increase in preeclampsia-eclampsia in New York State has brought the percent of mortality up to 42.8 of all maternal deaths for the year 1976, the highest percent recorded since 1970.

Of the total case reports received during the study period, 13 maternal deaths have been classified in the category, hypertensive states of pregnancy: five cases were diagnosed as preeclampsia and eight as eclampsia, including one case of postpartum eclampsia.

There is common agreement that mortality due to hypertensive states of pregnancy is generally preventable, and all cases in this series have been so classified based on currently accepted definitions for preventability. Autopsy reports were submitted for 61.5% of these cases.

Preeclampsia and eclampsia, according to the texts, most often affect primigravidas, with susceptibility highest at each end of the age scale. However, in this study, the condition of preeclampsia occurred almost exclusively in the 20-29 year age group (80%) with the only exception reported at age 38. Eighty percent of the preeclamptic cases were multiparas, asmight be expected with the majority at age 25 or over.

In the eclamptic group, the pattern is a more classic one, with the greatest concentration of cases occurring in patients 19 years of age or younger and in those 30 years and older. Of the eight eclampsia cases, four were primigravidas, three of whom reported age at 19 years or less.

The incidence of preeclampsia-eclampsia is known to be increased in patients with chronic cardiovascular renal disease, diabetes mellitus, severe anemia, or a familial

history of eclampsia or preeclampsia. Of 11 patients with complete case reports, eight were found to have non-contributory past medical histories. The remaining three had significant past histories reported as: Class A diabetes and anemia; chronic renal disease; and previous surgical removal of renal calculi followed by recurrent episodes.

Hypertensive states of pregnancy occur after the 20th week of gestation with the eclamptogenic process usually appearing later than the 25th week. In this series of cases, five women first developed symptoms during the second trimester, six during the third trimester, and two cases did not report this information. In all instances, symptoms first appeared beyond the 23rd week of gestation. Following the appearance of symptoms, and up until the time of hospital admission, seven patients received no therapy for these conditions while the records of four patients indicate therapy had been prescribed. In the untreated cases, the time period from onset of symptoms until date of hospital admission ranged from 24 hours to 12 weeks.

According to the texts, the most frequent causes of maternal mortality in preeclampsia and eclampsia are congestive heart failure, cerebral hemorrhage, and the complications of operative obstetrics. In this study, cerebrovascular accidents and pulmonary edema were reported to be the mechanism of death in 30.8% and 23.1% of the cases, respectively, followed by heart failure (15.4%), respiratory infection (15.4%), pulmonary embolism (7.7%), and renal disease (7.7%).

PLAINTIFF'S EXHIBIT 36

A CALL TO CONCERN

The increasing urgency of the issue of abortion rights requires us as teachers and writers of religious ethics to speak out.

* * * * *

1. The most compelling argument against the inflexibility of the absolutist position is its cost in human misery. The absolutist position does not concern itself about the quality of the entire life cycle, the health and well-being of the mother and family, the question of emotional and economic resources, the cases of extreme deformity. Its total preoccupation with the status of the unborn renders it blind to the well-being and freedom of choice of persons in community.
2. "Pro-life" must not be limited to concern for the unborn; it must also include a concern for the quality of life as a whole. The affirmation of life in Judeo-Christian ethics requires a commitment to make life healthy and whole from beginning to end. Considering the best medical advice, the best moral insight, and a concern for the total quality of the whole life for the born and the unborn, we believe that abortion may in some instances be the most loving act possible.
3. We believe it is wrong to deny Medicaid assistance to poor women seeking abortions. This denial makes it difficult for those who need it most to exercise a legal right, and it implies public censure of a form of medical service which in fact has the moral support of major religious groups.
4. We are saddened by the heavy institutional involvement of the bishops of the Roman Catholic Church in a campaign to enact religiously-based anti-abortion commitments into law, and we view this as a serious threat to religious liberty and freedom of conscience. We acknowledge the legal right of all individuals and groups, both religious and secular, to seek laws that reflect their religious and ethical beliefs. But the institutional mobilization of Roman Catholic dioceses, including massive

financial contributions by those dioceses to the National Committee for a Human Life Amendment, is inappropriate on this issue. If successful, it would violate the deeply held religious convictions of individual members and official bodies of many other religious groups about when human personhood begins, the relative rights of a woman and a fetus, and responsible family life. This is particularly a problem when there is no clear majority opinion on these fundamental issues nor an adequate social base of consensus for legitimate and enforceable legislation.

5. We call upon the leaders of religious groups supporting abortion rights to speak out more clearly and publicly in response to the dangerously increasing influence of the absolutist position. There may be some ecumenical risks in such candor, but those risks have already been assumed by those who have pressed the absolutist position on religious grounds. In the long run, the true test of ecumenical authenticity is the ability to sustain dialogue and friendship in spite of very sharp disagreements on matters of substance.

PLAINTIFFS' EXHIBIT 347

ABORTION IS MURDER

If you think God Failed to inform us as to when the soul enters into life, then speculate on the following passages from the Old Testament Jeremiah 1,5, "before I formed you in the womb I knew you, before you came to birth I consecreated you" Job 31, 15 "God shaped us all within our mother" Jeremiah and Job credited God with our creation in the womb. Eve also credits God in Genesis 4.2 "I have acquired a man with help of Yahweh" (GOD).

God does not credit human life that is not bound to eternity, therefore, the soul must be present at conception. To prove this we refer to David in the Old Testament who claimed he was A SINNER FROM THE MOMENT OF CONCEPTION. Psalms 51, 5.

* * * *

To be in sin indicates the presence of a soul. According to the New Testament, Jesus is concieved at once. He did not become Jesus, a week, a month, or many months later. He is Jesus at once. (you are you at once).

Mary the Mother of Jesus immediately goes to Elizabeth who is six months pregnant. Elizabeth rejoices in the presence of her Lord. Even though Mary is pregnant only a matter of days. In unmistaken terms the bible proves both Life and Soul present at (as David said) THE MOMENT OF CONCEPTION.

* * * *

Abortion is MURDER. The right to life comes directly from GOD.

Do not fight deformity by deforming your soul.

Poverty is no license to kill your son or daughter in the womb.

Doctors who perform abortions are paid Assassins.

* * * *

In the words of St. Paul, "You are not your own property. You have been bought and paid for. That is why

you should use your body for the Glory of God." Corin. 6,20.

It is, indeed, the very matter of life which is at stake. Medical science has informed us that at the moment of conception, there comes into being a unique human life in the microscopically tiny egg cell. Contained in this cell is the blueprint for the development of the whole human person, factors which will influence the temperment, physique, eye, hair and skin color, and even intellectual capacity. This cell's tissue composition is distinct from its mother's tissue and would be rejected from her body were it not to be enclosed in the amniotic sac.

The unborn child's civil rights have increasingly been recognized by the law. We recall, in particular, that case in which the mother was forced by the courts against her religious convictions to have a blood transfusion to maintain her baby's life. Likewise, the unborn child's rights of inheritance and medical or economic support, his right to recover damages for injury suffered in the womb are affirmed by the courts. In short, the law has cast itself in the role of safeguarding the rights of the unborn.

Law is an educator. If it allows the destruction of unwanted life, it unavoidably teaches that life is cheap.

* * * *

A final quote from Isaiah, "Woe to the legislators of infamous laws, to those who issue tyrannical decrees, who refuse justice to the unfortunate." Isaiah 10, 1.

HUMAN LIFE AMENDMENT GROUP
663 Fifth Avenue

P. Ex. 312A/*St. Louis Post Dispatch*,
Tuesday, January 27, 1976, page 1

...all of a St. Louis University warehouse. (Post-Dispatch Ph...
...ART" WORK WITH A MESSAGE: Anti-abortion sign on the wall of

PLAINTIFFS' EXHIBIT 462

SPEECH TO THE MARYLAND RIGHT TO LIFE BANQUET

by Henry Hyde

October 29, 1977

Your Excellency Bishop Stafford, Reverend Pastors, Reverend Clergy, my good friend Father Fiore who is also my constituent, distinguished ladies and gentlemen of the diocese and keepers of the flame.

* * * *

When I talk to groups such as your own I feel somewhat presumptuous because always in the group are doctors, clergy, volunteers and laymen who have been in this movement for many, many years and who know everything I know and know it much better.

* * * *

The issue is very important. The slaughter of the innocents. We have over 1 million homicides a year in this country all in the name of humanity and compassion, all in the blessed name of abortion. Herod must smile, if indeed he can smile wherever he is, when he looks at how technologically advanced we are in the slaughter of the innocents, something that he was—certainly a butcher but certainly inadequate compared to modern-day standards where it is done in antiseptic surroundings by doctors—men dressed as doctors who are masquerading as healers, but who have become executioners.

* * * *

I think so often of what Henry Adams said when he described the Cathredral at Chartes "It embodies the noblest aspirations of man, the reaching up for infinity." I think sometimes what our movement does is symbolically reaching up for that little bit of infinity. That is the soul of an unborn child.

* * * *

I think its your job and its my job as keepers of the flame to try to grab the bridle of that horse to pull it a little straighter, a little more forward towards the goal of total respect for the most defenseless, the most abstract in a physical way, the innocent, inconvenit unborn and if I may be permitted to say that when the time comes as it surely will when we face that very terrible moment, the final judgment, I've often thought as Fulton Sheen wrote that it is a terrible moment of loneliness you have no advocates there, you are there alone standing before God and a terror will rip your soul like nothing you can imagine. I really think that those in the pro-life movement will not be alone. I think there'll be a chorus of voices that have never been heard in this world but are heard very beautifully and very loudly in the next world and I think they will plead for everyone who has been in this movement and they will say to God, "Spare him, because he loved us." And God will look at us and say not "Did you succeed?" but "Did you try?".

PLAINTIFFS' EXHIBIT 368

March, 1979, THE YORKTOWNER

Say No to murder

To the Editor:

To all New York State taxpayers, who believe in the word of God.

We, George and Catherine Hannagan, taxpayers of the great state of New York, plead, beg with you all; take the time now to write to all the politicians in your various counties to take a stand and halt state funding of abortion.

You, the taxpayer, have the right to pursue with letters in flooding your representatives to use your tax dollars wisely. In our great state last year $8 million dollars were spent to abort unborn children.

By your non-involvement; these precious Holy Innocents of today's world are denied their God-given right to birth. They are destroyed and thrown away like a dirty old rag. Keep in mind, on judgement day, you will be held accountable! God, Our Father and Our Creator; only He creates and only He destroys.

You have the time to read this letter, you have the time to write to your assemblyman or assemblywoman and request that he or she co-sponsor this extremely important bill.

Assemblywoman Connelly is sponsoring Bill #A9091 in this session of the New York State Legislature.

Please write now, don't put it off, children are dying, all it takes is a little effort on your part to say No, to murder.

Under the protection of Mary, Our Blessed Mother.

Peace in Christ

George and Catherine Hannagan
Yorktown Heights

THE YORKTOWNER, Wednesday, March 22, 1978

Say "No" to murder—II

To the Editor:

How do George and Catherine Hannagan expect your readers to respond to their fervent appeal in *The Yorktowner* to, "write your assemblyman . . . to take a stand and halt state funding of abortion"? Such politicalizing in terms of, "the word of God," "precious Holy Innocents," "on judgement day you will be held accountable," and all blanketed "Under the protection of Mary, Our Blessed Mother," may sit uncomfortably with both Catholics and non-Catholics who believe in the separation of church and state.

I have no desire to affront the Hannagans' deep personal religious or philosophical convictions, even though their exercise of free speech to suggest pressures of hellfire and damnation against those who accept the people's laws expressed through the democratic process, seems—at least archaic.

And I do find their written appeal in fortunate contrast to uglier forms this new American zealotry is taking—in communities less civilized and perhaps more anonymous than Yorktown. Only last month, reports *The New York Times* of March 2:

"Someone posing as a delivery man and carrying a plastic bag walked into a clinic in Cleveland, and rushed down the hall to an operating room. The bag contained gasoline, which he splashed in the face of a technician. He then spread it around the room, set it afire, and fled. In an adjoining room, a woman was having an abortion. As flames swept into the room, and smoke rolled down the hallway, the woman leaped off the table and ran out. A counselor threw her a coat and she and 15 other patients, dressed in paper gowns, escaped."

The *Times* goes on to list similar arson/manslaughter and vandalism attempts during the past months by anti-abortion zealots against clinics and medical centers in Fairfax, Virginia, St. Paul, Minnesota, Columbus and Cincinnati, Ohio, Omaha, Nebraska and Burlington, Vermont.

Lincoln Diamant
Ossining

PLAINTIFFS' EXHIBIT 139

Baptists for Life Leaflet

BAPTISTS FOR LIFE

Founded to Manifest Christian Concern for
All Human Life, Whether Unborn,
Handicapped or Aged . . . . !

LOVE LIFE

DEFEND LIFE

RESPECT LIFE

> OUR CHRISTIAN CONCERN: ACTION . . .

Baptists, along with others, must speak out and resist the spread of the evils of abortion, infanticide, and euthanasia. To do so effectively, we must learn more about what is happening to these most helpless of God's children . . . and we must search for ways to help people afflicted with the problems that may lead them in desperation to break God's law. As private citizens, we can inform our elected representatives that we oppose any further enactment of laws that will allow human life to be taken for the sake of convenience. And we can urge the passage of an Amendment to the U.S. Constitution that will restore the once-inalienable right to life to all human beings.

PLAINTIFFS' EXHIBIT 137

MARANATHA BAPTIST BIBLE COLLEGE
Watertown, Wisconsin 53094

February 6, 1974

Dear Mr. Wood,

Through Rev. Robert Holbrook, Pastor of First Baptist Church, Hallettsville, Texas 77964, I have learned of your signature to a document which states that the Helms Amendment is a mistake and strongly suggest repeal of this same amendment.

As a Baptist minister and educator, I am greatly surprised that you as a Baptist minister would sign such a document, which is totally contrary to the teaching of God's Word and also that your signature would be identified with such others who are noted for their opposition to the truths of Bible-believing Christianity. The Bible is very clear about Bible-believers not being identified with those who deny the truths of God's Word—Romans 16:17, 18; II Corinthians 6:14-17; Ephesians 5:11; etc.

I am a Baptist. You are a Baptist. Baptists are supposed to be those who believe the Bible. You are representing Baptists in Washington.

I urge you to withdraw your name immediately from the above document, refuse to support those who advocate murder and totally and courageously support the Helms Amendment.

PLAINTIFF'S EXHIBIT 138

COMMUNINTY BAPTIST CHURCH
Sabattus, Maine

from the Pastor's Desk:

Dear Mr. Wood, or to whom it may concern,

* * * *

Things are not going too good in this world and . . . in this Nation too. Like in the Days of the Judges (O.T.) people "liberating themselves" do what is right in their *own* eyes. Not only in the world but also in the Church. This is well to be included as a reason that it is so embarrasingly difficult to gain some new Church members from those who are wrestling with these issues and miss firmness and thoroughness and Theological Genius (in the Church) which HAS to be behind any decision in which the Church is instrumental.

Abortion is just ONE of the big topics. We are well familiar with the "Convenience" reasonings of the pro's. Convenience and inconvenience, however is not something new.

But what *IS* rather new in Church Circles is the ABSENCE of the climate of Prayer. Based on the knowledge that here is a matter which should NOT be decided on as if it is a tax issue or the building of a Super Highway, yes or No, one knows—should know—that here is something of the highest order and ONLY fools will tread where angels don't dare to.

Who of the ones who have spoken have studied the thorough process of the Generation of Diversity, the differentiation process which has already lead to the cell variation resulting in highly organized multiple organs in the foetes and meanwhile studied the Bible, cried out to God and called for Prayer Meetings and THEN—and Not sooner—spoken in favour of Abortion? Who?

As of now I am horrified to see the Executive Director of the Baptist Joint Committee on Public Affair appearing on the Pro-List".

PLAINTIFFS' EXHIBIT 457

RIGHT TO LIFE

Right to Life Society of Greenville
P. O. Box 5065
Greenville, Mississippi 38701
Phone 332-6176

Newsletter #3

EDITORIAL BY A PASTOR

WHY BIBLE-BELIEVERS OPPOSE ABORTION

True Bible-believers are firm in their conviction that the Bible is the only reliable source of faith and practice. This necessitates their understanding what the Bible teaches about that faith and practice so that they can diligently apply those principles to everyday activity. There is no doubt in their minds that there are opposing forces working in the affairs of men, because the Bible clearly states that God, the Creator, and Satan, the Destroyer, are in spiritual conflict from the book of Genesis through the book of Revelation.

When moral questions arise, the people of God, having been made new creatures through the new birth in Christ Jesus, immediately search the Scriptures for principles of right and wrong, and having found them, they firmly take their stand on those teachings.

On the question of abortion, the true Bible-believer must stand on the principle that abortion is unrighteous, ungodly, selfish, sinful, wrong, and destructive to the will of God in His plan for the human race.

Some of these Bible principles are seen in the facts that:

1. God creates life in the womb. (Jeremiah 1:5)
2. God sustains life in the womb. (Acts 17:28)
3. God commands life through the womb. (Genesis 1:28)

4. God blesses life from the womb. (Genesis 49:25)
5. God spares life to come from the womb. (Galatians 1:15)
6. God rejoices life in the womb. (Luke 1:41, 44)
7. God fills a life with the Holy Spirit in the womb. (Luke 1:15)
8. God calls life in Elizabeth's womb "a son." (Luke 1:13)
9. God names life in the womb "John" (Luke 1:13), and "Jesus" (Matthew 1:21)
10. God ordains life in the womb to accomplish great things in His purposes. (Matthew 1:21 and Luke 1:16)

In the light of the Bible teaching that an unborn baby is called a child (Matthew 1:18), and in these days of tragic compromise to Satan's deception, one cannot help but wonder how many great men, women, and leaders have been aborted by those who forget that:

"Jesus loves the little children,
All the children of the world,
Red and yellow, black and white,
They are precious in *His* sight,
Jesus loves the little children of the world."

Hugh A. Martin, Pastor
Emmanuel Baptist Church
Greenville, Mississippi

* * * * *

PLAINTIFFS' EXHIBIT 420

RIGHT TO LIFE

NEWSLETTER

VOL. I No. 22 Oct. 25, 1973 41 State St. Albany, N.Y. 12207

Dear Right to Lifers,

* * * * *

we exist for the purpose of protecting innocent human life—we don't exist to serve an organization. God willing, we shall keep His purposes uppermost and our egos hindmost.

* * * * *

12. One resolution which can't wait any longer is one calling for all RTL people to make a special effort to pray together (although separated by miles) between 12:00 noon and 12:15 p.m. and every Thursday. Only the Devil voted against it—all RTL voted it.

* * * * *

Go with God in all endeavors,

John Middleton, PhD
CHAIRMAN

PLAINTIFFS' EXHIBIT 429

NEW YORK STATE
RIGHT TO LIFE COMMITTEE, INC.

March 31, 1976

Save-A-Baby Campaign time is here. It seems impossible that another year has gone by so quickly. As long as the 20th Century Slaughter of the Innocent continues, we must continue to beg for funds to maintain their only organized Voice—The Right to Life Movement.

* * * * *

If you need volunteers, and there are not enough active members in your group, telephone or personally visit the pastors and leaders of the local Churches and Synagogues. Ask them to supply you with volunteers who will have the opportunity of helping the pro-life movement, particularly on Mother's Day. Be sure to have a well thought out plan with you. Example: Ask prolifers (or even members of one family) to sell chances before and after services.

* * * * *

May God bless you for your continuing dedication in the work which we have all been called.

PLAINTIFFS' EXHIBIT 433

September 3, 1976

TO: Area Directors

FROM: Marge Fitton
Treasurer, NYSRTLC

SUBJECT: RESPECT LIFE COLLECTIONS

By this time your local Bishop, or his Vicar, hopefully has sent a letter to his parishes sanctioning the October RESPECT LIFE Collections.

* * * * *

Because of the Catholic Committee's positive spirit of cooperation with New York State Right to Life Committee we expect that our largest contributions will be from the Catholic community. However, once again, we beg you not to over-look your local Protestant and Jewish clergy. A leter, 'phone call, or personal visit from the local Chairman asking for an "Ecumenical Witness to Life" by means of your call could bring at least three great blessings: (1) More God loving people united in the defense of innocent life; (2) A dispersion of the media's determination to label the pro-life movement as strictly Catholic. (3) An increase of the funds needed by both your group and the state office to continue our work.

* * * * *

PLAINTIFF'S EXHIBIT 444

NEW YORK STATE RIGHT TO LIFE COMMITTEE, INC.

STATEMENT OF REVENUES

OCTOBER 1, 1976-JULY 31, 1977

	Amount	Total
MEMBERSHIPS		
Individuals	$ 325.00	$
Family	280.00	
Sponsor	420.00	1,025.00
GROUP AFFILIATIONS		
Provisional	500.00	
Full	4,000.00	4,500.00
DONATIONS		
Group	308.54	
Individual	332.00	640.54
JEWELRY		152.50
EDUCATIONAL MATERIAL		433.18
REIMBURSEMENTS		
Newsletter	2,720.85	
Xerox	144.26	
Misc.	116.09	2,981.20
SAVE-A-BABY		25,569.07
RESPECT LIFE COLLECTIONS		77,656.77
INTEREST INCOME (NEW YORK TELEPHONE)		16.00
MEETINGS - LUNCHEONS		294.66
PATRONS—ANNUAL CONVENTION		219.00
TOTAL REVENUES:		113,487.92

P. Ex. 352/St. Louis Cathedral Bulletin

JOHN JOSEPH CARDINAL CARBERRY
ARCHBISHOP OF SAINT LOUIS

SAINT LOUIS CATHEDRAL BULLETIN

VOL. 74, NO. 12 APRIL 2, 1978

* * *

PICKET ABORTION CLINIC

APRIL 15, 1978 is the date assigned to the St. Louis Cathedral Parish for picketing THE ABORTION CHAMBER at 130 North Euclid.

EVERYONE, regardless of any other interests, should be a part of the Pro-Life Movement. Do not be confused by slogans, such as; 'imposing your morality on others', etc. TO BE SILENT IS TO CONSENT.

A Christian pro-life picketer shows visably that he is not being silent. Our Lord said, "Your light must shine before men so that they may see goodness in your acts and give praise to your heavenly Father." (Matthew 5:16)

NO CHRISTIAN WILL EXCUSE HIMSELF LIGHTLY ON THIS DUTY.

March for Life

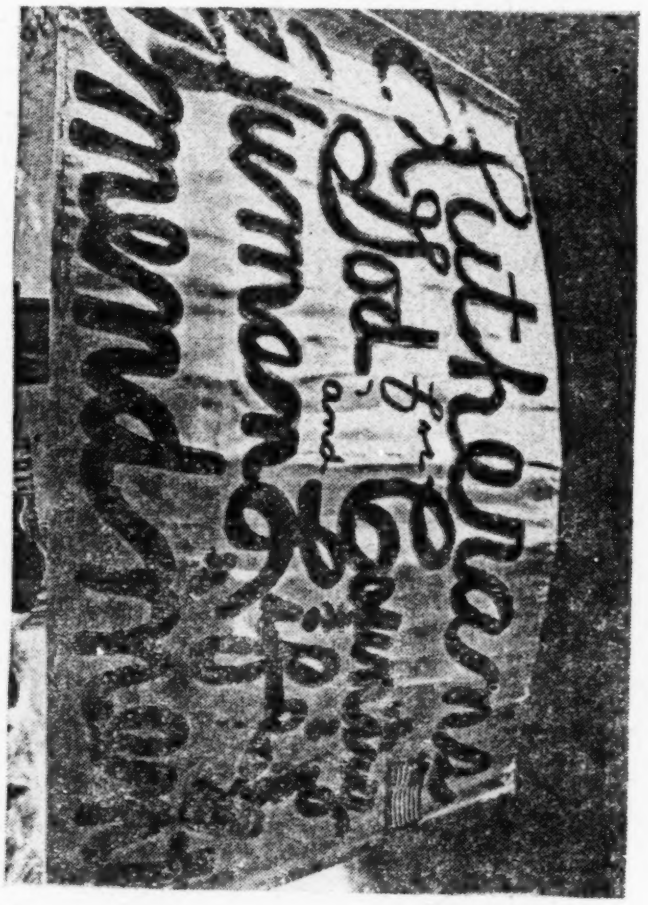
Dear Marchers for Life,

January 22, 1978 — five years after the Supreme Court's infamous abortion decisions! Because that date falls on Sunday, we will extend the annual MARCH FOR LIFE activities to Monday, January 23, 1978, when the Congress is in session. See the "Program" below.

Abortionists predicted that, with abortions legal, prolifers would gradually accept them as part of the modern way of life. But, we have not accepted killing preborn or born human beings as a way of life for our society, and we continue to wage the necessary, just and peaceful war against the evil of abortion and all other evils which have come in its wake. There have been some prolife successes as skirmishes were won during 1977. However, prolifers continue the battles so that good can triumph over evil.

* * *

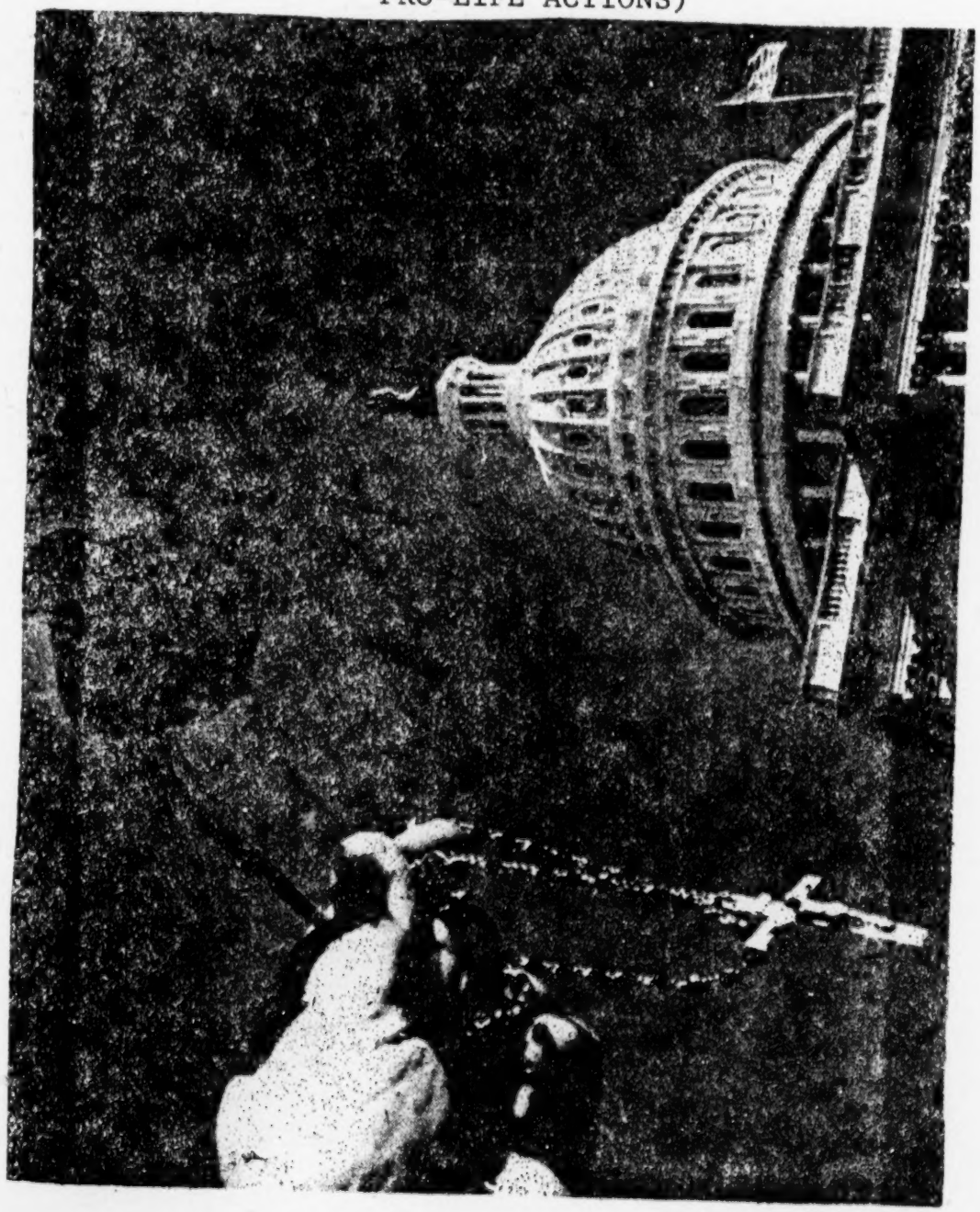
The beautiful red rose, symbol of short life and martyrdom, has done a powerful job of lobbying for the preborn child. We must keep the roses working!



P. Ex. 456/Photographs of March for Life
January 22, 1978, Washington, D. C.

P. Ex. 453/The Long Island Catholic,
January 19, 1978, page 1

(Headline: BISHOP ASKS SUPPORT FOR
PRO-LIFE ACTIONS)



P. Ex. 453/The Long Island Catholic, January 26, 1978, page 26

Members of St. Brigid's parish in Westbury with the Rev. Arthur C. Anderson (left background) of St. Pius X Preparatory Seminary, Uniondale.

P. Ex. 453/The Long Island Catholic, January 26, 1978, page 26 (cont'd)

One of the lead banners in the march represented the Knights of Columbus who came from various areas of the nation.

Seminarians from various dioceses marched together under this banner.

SUPREME COURT OF THE UNITED STATES

No. 79-1268

PATRICIA R. HARRIS, SECRETARY OF HEALTH, EDUCATION AND WELFARE, APPELLANT,

v.

CORA MCRAE, ET AL.

APPEAL from the United States District Court for the Eastern District of New York.

Treating the application for stay of the judgment of the United States District Court for the Eastern District of New York as a statement as to jurisdiction, probable jurisdiction is noted. Opening briefs on the merits shall be filed on or before March 18, 1980. Replies thereto shall be filed on or before April 10, 1980. The case is set for oral argument in tandem with No. 79-4, *Williams* v. *Zbaraz;* No. 79-5, *Miller* v. *Zbaraz;* and No. 79-491, *United States* v. *Zbaraz.*

February 19, 1980

[SEAL]

OFFICE OF SOLICITOR GENERAL

Received

Feb. 27, 1980

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